

Date: Jan 13 1981

Subj: Class 3 Locations (Separation of Church and Pipelines)

From: Beatriz Ferreira, DCC-1

To: Paul Biancardi

## THE PROBLEM

Pipeline used in the transportation of gas regulated under the Natural Gas Pipeline Safety Act (NGPSA) 1/ is categorized into different class locations. 2/ The purpose of designating class locations is to require higher standards of safety for pipelines situated near densely populated areas. 3/ Prior to 1971 4/ interstate transmission lines were installed in rural areas and designated class 1 or class 2 locations. 5/ Subsequently, the building of churches within 100 yards of these lines required a reclassification of the lines to Class 3 locations. 6/ Further, this reclassification required that the existing maximum allowable operating pressure (MAOP) 7/ be confirmed or revised to coincide with the new class location. 8/

Certain operators affected by these requirements have argued that compliance is economically unfeasible and will not enhance the public safety. In support of this argument, James C. Thomas, Chief, Southern Region, Office of Operations and Enforcement, has requested that the Materials Transportation Bureau re-evaluate the present MAOP requirements with respect to the "normal usage of rural churches". 10/

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1/ As amended, 49 U.S.C. 1671.

2/ There are four class locations. Generally, a class location is determined by the number of buildings in a class location unit. A class location unit is a designated area that extends 220 yards on either side of the center line of any continuous one-mile length of pipeline. 49 CFR 192.5.

3/ 35 Fed. Reg., p. 5012, Mar. 24, 1970; also see Memo, "Interpretation of 49 CFR 192.5(d)(2), Office of Pipeline Safety Operations, Sept. 14, 1976".

This memorandum examines the interpretation issues surrounding class location requirements in light of the definitional development of class locations as it relates to the normal use of rural churches. An attempt is made to provide useful background information and to propose recommendations to resolve the class location issues created by the presence of churches in various rural areas. In light of the information presented, it is hoped that the Office of Pipeline Safety Regulation and the Division of Pipeline Safety Enforcement, Office of Operations and Enforcement, will combine their efforts to resolve this issue and make a final determination as to whether Class 3 locations defined under 192.5(d)(2) should be reclassified or whether the MAOP requirements for these Class 3 locations as presently defined should be re-established.

## I. REGULATORY SCHEME

On August 12, 1968, the NGPSA 11/ was enacted. The Act required the Secretary of Transportation (Secretary) to adopt within three (3) months, the then existing State safety requirements for gas pipeline as interim regulations and, to establish, within twenty-four (24) months, minimum Federal safety standards. 12/ The interim standards became effective on December 13, 1968, 13/ and on November 12, 1970, were partially revoked 14/ as the minimum Federal safety standards became effective. 15/ These safety standards, found in Part 192 of the Code of Federal Regulations (CFR), are applicable to pipeline facilities and the transportation of gas.

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4/ Memo, "Petition for Rulemaking" J.C. Thomas, Chief, Southern Region, Office of Operations and Enforcement, Jan. 24, 1979, CPF 2309.

5/ 49 CFR 192.5(b) and (c). A Class 1 location is any class location unit that has 10 or less buildings intended for human occupancy. A Class 2 location is any class location unit that has more than 10 but less than 46 buildings intended for human occupancy.

6/ 49 CFR 192.5(d)(2). A Class 3 location is [a]n area where the pipeline lies within 100 yards of any of the following: (i) A building that is occupied by 20 or more persons during normal use. (ii) A small, well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly.

One such standard requires the classification of pipelines into different class locations 16/ each providing a certain degree of safety. The need for class location designations arose because a "greater number of people in proximity to the pipeline substantially increases the probabilities of

personal injury and property damage in the event of an accident." 17/ Further, the "external stresses, the potential for damage from third parties, and other factors which contribute to accidents will also increase with the population." 18/ In addition, class locations are considered in determining the frequency of patrolling of transmission lines to observe surface conditions on and adjacent to the transmission line right-of-way 19/ and, in conducting leakage surveys. 20/ More importantly, class locations determine the MAOP of certain pipelines.

Once the class location is established, the regulations require the operator to determine whether the hoop stress 21/ corresponding to the MAOP 22/ for each segment of pipeline is commensurate with the established class location. 23/ If the operator determines that the hoop stress in a segment of pipeline is not commensurate with the class location, he must confirm or revise the MAOP 24/ so that the hoop stress corresponds. 25/ An established class location may change, however, as a result of an increase in population density. If this occurs, the operator is required to conduct a study to determine the present class location and other related factors, 26/ including the need to confirm or reduce the MAOP.

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7/ 49 CFR 192.3. MAOP means the maximum pressure at which a pipeline or segment of a pipeline may be operated under 49 CFR 192. See also 49 CFR 192.619. In addition, the hoop stress corresponding to the established MAOP must be commensurate with the present class location. (49 CFR 192.607). Hoop stress is the stress in a pipe wall, acting circumferentially in a plane perpendicular to the longitudinal axis of the pipe and produced by the pressure of the fluid in the pipe. Guide for Gas Transmission and Distribution Piping Systems, American Society of Mechanical Engineers, 228, Dec. 15, 1970

8/ 49 CFR 192.611.

9/ Supra, Note 6.

10/ Memo, "Effect of Rural Churches on Section 192.5(d)(2)(ii)", May 11, 1979, CPF 2309.

11/ Supra, Note 1.

In accordance with Section 192.611(a), if the segment of pipeline affected by the change of class location has been previously tested in place to at least ninety (90) percent of its specified minimum yield strength (SMYS) 27/ for at least eight (8) hours, the MAOP must be confirmed or reduced so that the corresponding hoop stress will not exceed a certain percentage of the SMYS of the pipe. 28/ This percentage is determined by the class location. 29/ For instance, a Class 2 location would permit the operator to operate the affected segment of pipeline at a higher MAOP than a Class 3 location. Consequently, if a class location changes to a higher class location the MAOP may have to be reduced to correspond to the new class location or the pipe may have to

be replaced to permit the operator to continue to maintain a higher pressure. It is this requirement that the Chief, Southern Region, challenges.

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12/ 35 Fed. Reg., 13248, Aug. 19, 1970.

13/ The interim standards became Part 190 of Title 49 of the Code of Federal Regulations (CFR) Id.

14/ All the interim standards were revoked except for those provisions applicable to design, installation, construction, initial inspection, and initial testing of new pipelines which would remain in effect until March 13, 1971.

15/ 35 Fed. Reg., 13257, August 19, 1970.

16/ Supra, Note 2.

17/ 35 Fed. Reg., 5012, Mar. 24, 1970.

18/ Id.

19/ 49 CFR 192.705(b).

20/ 49 CFR 192.706(b).

21/ Supra, Note 7 for definition.

22/ Supra note 7.

23/ 49 CFR 192.607(a)(2).

24/ 49 CFR 192.607(b).

25/ Supra, Note 8.

## II. BACKGROUND

The class location issue with respect to rural churches has been the subject of numerous inquiries. This memorandum, however, focuses on class location issues arising from an on-site inspection of pipeline facilities operated by Texas Gas Transmission Corporation (Texas Gas) 30/

of Owensboro, Kentucky. The Kentucky Public Service Commission conducted the inspection between May 25 and July 8, 1976, and referred the alleged violation to the Chief, Southern Region, Office of Operations and Enforcement (OOE). 31/ Based on the results of this inspection, the Chief cited Texas Gas for operating specific sections of its transmission lines in violation of the MAOP specified by Federal regulations. The sections of the affected pipeline were situated within 100 yards of a rural church, therefore, designated Class 3 location. 32/

By letter dated September 13, 1976, Texas Gas advised the Chief, Southern Region, that the approximate cost to upgrade the subject pipeline facilities affected by the rural church change of class locations was estimated to be \$903,000. 33/ In contrast, Texas Gas indicated that the estimated value of the three churches in question was approximately \$90,000. Texas argued that the significant difference in the cost to upgrade the pipeline facilities and the estimated value of the churches did not warrant the assessment of a civil penalty under the circumstances.

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26/ 49 CFR 192.609 Confirmation or revision due to changes in class location that occur on or after July 1, 1973, must be completed within 18 months of the change in class location. 49 CFR 192.611(e)(2).

27/ 49 CFR 192.3, Definitions.

28/ 49 CFR 192.611(a).

29/ Id. In Class 2 locations, the hoop stress will not exceed 72 percent of SMYS; in Class 3 locations, 60 percent of SMYS and, in Class 4 locations, 50 percent of SMYS.

30/ CPF 2309.

31/ According to James Thomas, Chief, Southern Region, Office of Operations and Enforcement, Kentucky is the only state where pipeline safety inspections are conducted by an entity (Kentucky Public Service Commission) other than the Regional office.

By letter, dated December 3, 1976, 34/ Texas Gas requested an extension of time to December 23, 1976 to respond to the above alleged violation of the MAOP requirements. In a subsequent letter dated December 21, 1976, 35/ Texas Gas advised Cesar DeLeon, Acting Director, Office of Pipeline Safety Operations (OPSO), 36/ Materials Transportation Bureau (MTB), Department of Transportation (DOT) that while not conceding that it was in violation of the MAOP provision, it intended to seek a waiver 37/ of compliance of the MAOP requirements due to economic hardship. Texas further indicated that pending a determination it would undertake certain safety measures. 38/ In the event that the waiver was denied and Texas Gas was found to be in violation of the MAOP requirement, Texas Gas requested the authority to

continue to operate the pipeline facilities in the vicinity of the rural churches until "such time as the pipeline facilities can be upgraded to meet DOT's regulations." On January 14, 1977, Texas Gas requested a waiver of compliance.

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32/ Letter, James C. Thomas, Southern Region, Notice of Probable Violation, Nov. 5, 1976.

33/ Attachment, "Summary of Data Pertaining to Class 1 Areas at Mileposts 436.5, 511.7, 526.5 and 608.1.", letter, W.T. Turner, Jr., Texas Gas, Sept. 13, 1976. CPF 2309.

34/ Letter, Exhibit W.T. Turner, Jr., Vice President, Engineering Texas Gas Transmission Corp., Dec. 3, 1976, CPF 2309.

35/ Letter, Exhibit 3, W.T. Turner, Jr., Texas Gas, Dec. 21, 1976, CPF 2309.

36/ Safety enforcement responsibilities of OPSO were later assumed by the Office of Operations and Enforcement of the Materials Transportation Bureau. See later, Robert L. Paullin, Associate Director, Operations and Enforcement, Materials Transportation, Jan. 9, 1979, CPF 2309.

37/ 49 U.S.C. 1672, Amended by P.L. 96-129, Nov. 30, 1979. 49 CFR 5.11.

Apart from its request for a waiver of compliance, Texas Gas contended that based on its interpretation of the Federal regulations, it was not in violation of the class location provision, and therefore, could not be in violation of the MAOP requirements. 39/ Texas Gas indicated that since the adoption of DOT's regulations, 40/ it had consistently classified the pipelines in the rural church areas as Class 1 locations based primarily on the frequency of use. In support of its position, Texas Gas referred to a November 1976 Advisory Bulletin 41/ interpretation on the class location provision in which OPSO discussed frequency of use as a factor to consider in the classification of class locations. 42/ Based on this interpretation, Texas argued that OPSO had erroneously classified pipelines situated in the vicinity of a rural church as Class 3 locations. Further, Texas Gas contended that the intent of having Class 3 location was "obviously to cover

specified areas such as playgrounds, drive-in theaters, recreational areas, and others, such as schools whose normal use approached nine months of a year." Texas Gas argued that such intent is misapplied when considered with respect to "isolated churches and other areas where use is not normal in the context" 44/ of the above examples. Finally, Texas argued the following:

The "original intent of class locations was to provide safety measurers in areas where numbers of people (residential or commercial) would be exposed to a potentially hazardous environment if for some reason due to increased activity the facility might be damaged." 45/

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38/ These safety measures included the following:

1. Place standard pipeline markers over each pipeline along the pipeline route, at intervals of 100 feet for a distance of 300 feet in each direction away from each church.
2. Perform semiannual electrical surveys, to further assure an adequate level of cathodic protection at these locations.
3. Provide church officials with the same information packet pertaining to pipeline operations and emergencies that is provided to all adjacent right-of-way landowners, in accordance with our emergency procedures.

On April 21, 1978, almost two years after the on-site inspection of the Texas Gas pipeline facilities occurred, the Acting Director of the Office of Pipeline Safety Operations, Mr. Cesar DeLeon, issued a recommendations indicating that a review of the circumstances and factors surrounding the alleged violations by Texas Gas warranted the pursuit and collection of a civil penalty. 46/ The record did not contain a recommended penalty assessment and no further action was taken. About eight months later, however, on December 26, 1978, the Association Director for Operations and Enforcement, Mr. Robert L. Paullin, issued a contradictory recommendation based on a review of what appeared to be the exact criteria previously considered by Mr. DeLeon. 47/ Mr. Paullin's recommendation indicated that the effort required to pursue a civil penalty assessment and its collection was not warranted. The record indicates that the case was closed.

Almost four years have elapsed since Texas Gas applied for a waiver of compliance of the MAOP requirements. To date action on the waiver remains pending and, whether a determination will be and prior to the end of this year remains unknown. 48/

On January 24, 1979, the issue of rural church-Class-3-locations was revived in the form of a petition for rulemaking submitted by James C. Thomas, Chief, Southern Region. 49/ In his petition, Mr. Thomas recommended that the MAOP provision in the Federal regulation be amended to permit pipeline determined as Class 3 location under Section 192.5(d)(2) of the Federal regulations to operate at a higher MAOP than presently allowed under the regulations. 50/ Receipt of the petition was acknowledged on February 1, 1979. 51/ To date, however, no further action has been taken. Finally, on May 11, 1979,

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38/ Continued

4. Conduct flame ionization leak surveys over each pipeline in the area of the three churches at six-month intervals.
5. Specifically instruct the pilots conducting weekly aerial surveys to make particular notes of any unusual activity in the vicinity of these three churches.
6. Install and maintain a fence to separate the property of each church from the pipeline right-of-way upon obtaining the permission of the landowner. Supra, note 5.

Mr. Thomas again raised the issue of rural church class 3 locations when he expressed his reluctance to preliminarily assess another operator, Columbia Gulf, for violation of MAOP requirements for the following reasons:

1. The economic impact is too great to rely on the enforceability of an interpretation of Section 192.5(d)(2)(ii), as it relates to normal usage of rural churches;
2. The previous compliance file for Texas Gas Transmission Corporation, was abruptly closed and the waiver not acted upon; and,
3. The Associate Director's, Office of Operations and Enforcement, failure to act on Mr. Thomas' petition for rulemaking. 52/

Based on these reasons, Mr. Thomas requested a resolution of the rural church Class location issue prior to proceeding further in cases of this nature. 53/



- 39/ Attachment, Exhibit 5, "Position of Texas Gas Transmission Corporation regarding the Classification of its Pipeline facilities located in the vicinity of Three Rural churches.", CPF 2309.
- 40/ 49 CFR, Part 192 became effective on Nov. 12, 1970, 35 F.R. 13257, Aug. 19, 1970.
- 41/ Office of Pipeline Safety, Advisory Bulletin, No. 76-11, Nov. 1976.
- 42/ A review of the November, 1976, Advisory Bulletin (No. 76-11) interpretation of 49 CFR 192.5 revealed the following:
- "The purpose of this Class location definition is to require higher standards of safety for pipeline near buildings or small outside areas where 20 or more persons congregate at regular intervals. However, the example of outside areas which are covered by the definition, i.e. playground, recreation area, outdoor theater, indicate that the definition is intended to apply to places where 20 or more persons assemble more frequently than one week annually.
- 43/ Supra, Note 39.
- 44/ Id.
- 45/ Id.
- 46/ Form, "CPF Review for Civil Penalty Assessment Potential", Cesar DeLeon, Acting Director, Office of Pipeline Safety Operations, April 21, 1978, CPF 2309.
- 47/ Form "CPF Review For Civil Penalty Assessment Potential," signed by Frank E. Fulton for Robert L. Paullin, Associate Director for Operations and Enforcement, Dec. 26, 1978, CPF 2309.
- 48/ According to Robert Langley, Office of Pipeline Safety Regulations, the waiver has been "put on the back burner and if my boss gets after me about it, I might get it out by the end of this month". Mr. Langley also stated that the waiver would probably be issued based on the interpretation of 49 CFR 192.5 included in the November 1976 Advisory Bulletin, No. 76-11.
- 49/ Memo, "Petition for Rulemaking", James C. Thomas, Chief, Southern Region, Office of Operations and Enforcement, Jan. 24, 1979, CPF 2309.
- 50/ Section 192.611(a) would be amended as follows with amended sections underlined:

If the segment involved has been previously tested in place to at least 90 percent of its SMYS for a period of not less than 8 hours, the maximum allowable operating pressure must be confirmed or reduced so that the corresponding hoop stress will not exceed 72 percent of SMYS of the pipe in class 2 locations and class 3 locations determined under Section 192.5 (d)(2), 60 percent of SMYS in all other class 3 locations, or 50 percent of SMYS in class 4 locations. Id.

51/ Letter, A. Louise Mills, Chief, Dockets Branch, Information Services Division, Office of Program Support, Materials Transportation Bureau, Research and Special Programs Administration, Department of Transportation, Feb.1, 1979.

52/ Supra, Note 10.

53/ In a telephone conversation on Nov. 24, 1980, Mr. Thomas, Chief, Southern Region, informed me that his office had stopped inspections for class location violations with respect to rural areas until Section 192.611 and 192.5 issues are resolved.

### III. DISCUSSION

#### A. Historical Development of Class Locations

On March 24, 1970, the Office of Pipeline Safety, (OPS) issued a proposed rulemaking notice to establish class location definitions. 54/ According to the notice, a 10-mile population density index used to determine class locations was established at a time when class locations had to be considered only during initial construction. The proposed requirements eliminated the need for a 10-mile density index by making class locations relate directly to the population density.

The proposed rulemaking also changed the zone factor used to determine population density. Prior to the change, population density was taken in a 1/2 mile wide zone, extending 1/4-mile on either side of the pipeline. A subsequent study, however, revealed that a 1/4-mile wide zone extending 1/8-mile on either side of the pipeline would appear to be equally appropriate to determine environmental impact. The notice indicated that it would be unusual for a population change occurring more than 1/8-mile away to have an impact on the pipeline. Further, the notice observed that an accident on the pipeline would rarely have an effect on people or buildings that were more than 1/8-mile away. As a result of this observation, the notice proposed a reduction of the population density zone from 1/2-mile to 1/4-mile and noted that such could occur without any adverse effect on safety. Today, the population density zone remains at 1/4-mile. 55/

In addition to the width of the population density zone, a defined length of the pipeline was necessary to determine which class location definition would apply at a particular point on the pipeline. The 1970 notice proposed the use of the "sliding mile". This sliding mile would be

moved along the pipeline overlying the continuous 1/4-mile wide zone. The number of buildings within the sliding mile at any point during the movement would determine the class location for the section of pipeline within that sliding mile. An overlap of class locations would require that the affected pipeline be designated the higher numbered class location i.e. a pipeline designate both Class 3 and Class 2 would be classified as a Class 3 location.

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54/ 35 Fed. Reg. 5012, Mar. 24, 1970, Dkt. No. OPS-3D.

55/ 49 CFR 192.5.

According to the notice, Class 3 locations would include a point in the pipeline that would normally fall within a Class 1 or Class 2 location on a density basis if such point was situated within 300 feet of a building that during normal use would be occupied to pipeline located within 300 feet of a well defined outside area meeting the same criteria. 56/

In response to the proposed rulemaking notice, forty-one comments on the subject of class location definitions were filed with OPS between April 9, 1970 and May 15, 1970. Prevalent among the various concerns noted in the comments was the amount of time allowed for the affected operators to comply with the new class location requirements. Almost all the operators who commented believed that they would be unable to meet the proposed date of compliance.

Finally on August 11, 1970, DOT issued standards which established new definitions for class locations. 57/ A study of all pipelines operating at more than 40 percent of SMYS was required to ascertain their class location and to confirm or revise the MAOP. 58/ The fact that the change of class location requirements were not included in the interim Federal requirements in a number of states and the disagreement within the pipeline industry as to the actual meaning of the change of class location requirements raised questions as to the practicality of the schedule for adjusting operating pressures once the class location study was completed. Consequently, a hearing was held on May 21, 1971 59/ to give interested parties an opportunity to recommend adjustments to the time period designated to complete confirmation or revision of operating pressures. As a result of the recommendations and observations presented by affected operators at the hearing the compliance period for the confirmation or revision of MAOP due to changes in class location was adjusted and remains as outlined in Section 192.611(e).

In addition to the question of the compliance period, operators at the hearing also presented arguments concerning the problems arising in connection with compliance of Section 192.607. Several operators raised economical issues in connection with the enforcement of class

location requirements. For instance, one operator, Southern Natural Gas Company, estimated that its cost of replacement and testing of affected

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56/ Supra, Note 15. The definitions remain unchanged.

57/ Id.

58/ 49 CFR 192.607.

pipeline would be about \$15 million. 60/ Interestingly, many of the operators who criticized the great costs of compliance with Federal regulations had expended large sums of money and had initiated compliance action prior to the implementation of the new class location requirements. 61/ Nonetheless, maintaining a balance between the financial burden imposed upon the operator to comply and the assurance of safety to the public became a dominant theme throughout the hearings.

#### B. Interpretation of "Normal Use"

Prior to the 1970 proposed rulemaking hearings one commentator [sic] concerned with the enforcement of class 3 location requirements mentioned the interpretive issues arising from the term "normal use" found in the definition of class 3 locations. 62/ A review of the docket file, however, revealed that this question was not addressed by OPS at that time. This issue, was again raised at the 1971 hearing when Texas Gas questioned the applicability of the Class 3 location requirements to areas with rural churches, fairgrounds or camps. Texas Gas indicated that its class location study revealed eighteen such areas of which about 1/2 included dwellings or areas of limited use. Therefore, Texas Gas recommended at the hearing proceedings that OPS review its class location regulation in connection with their application to areas of limited use. It specifically recommended that Section 192.5(d)(2) be revised to eliminate from Class 3 locations the multiple occupancy buildings and those areas where normal usage is seasonal or infrequent. 63/ The subject was not raised by any other operator present at the hearing nor does the record indicate that a response to the Texas Gas recommendation was made by Mr. Frank Fulton. 64/

The "normal use" interpretation issue remained dormant for about five years until August 5, 1976 when James C. Thomas, Chief, Southern Region, requested a legal interpretation of Section 192.5(d)(2) with respect to the "normal use" of a fairground used annually for a six-day period. 65/ The OPS' response to the August 5 inquiry was combined with a response to a subsequent request submitted by Thomas on August 16, 1976. 66/ In his second request, Thomas inquired whether a rural church

59/ Transcript of Proceedings on Class Locations, May 12, 1971, Dkt. No. OPS-3D.

60/ Id.

61/ Supra, note 59 at 72.

located 122 feet from an interstate transmission line which half services twice a week with attendance of less than twenty and had an annual revival with an occasional attendance of 40-45 persons would be classified a Class 3 location under Section 192.5(d)(2).

A search of the interpretation file for Section 192.5 67/ revealed an informal handwritten response to the August 16, 1976 request written by Mr. DeLeon on a blue route slip attached to Thomas' memorandum. The response stated:

"I do not think this is a Class 3 location because an annual revival is not the normal use of a Church. The normal use of a church is weekly church services."

A formal response to the August 5, and August 16, requests followed on September 14, 1976. 68/ Mr. DeLeon expressly indicated that the definition of Class 3 locations under Section 192.5(d)(2) "is intended to apply to places where 20 or more persons assemble more frequently than one week annually." Further, he explained his response by stating that "the risk involved where an assembly of 20 or more persons meet annually for a short period would be much lower than where an assembly occurs more often, and thus does not necessitate application of the high class 3 safety standards."

On September 27, 1976, Mr. Thomas submitted another memorandum. 69/ His inquiry concerned the New Clover Creek Baptist Church, a rural church, "occupied by 20 or more persons during normal use." Mr. Thomas asked whether the 100 yard distance criteria referenced in Section 192.5(d)(2) would be met if most of the church area lay outside of the 100 yard corridor. A handwritten response by Mr. DeLeon expressed the following:

"Damn! This is really cutting hairs. I think if any part of a church is within corridor, it would be subject to the regulation." 70/

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62/ Letter, R.A. Ranson Company Inc., May 8, 1970, Dkt. No. DPS- 3D.

63/ Supra, Note 59 at 99.

64/ Supra, note 59, Frank Fulton presided over the hearing.

65/ Memo, "Interpretation of 192.5(d)(2)", J.C. Thomas, Chief, Southern Region, OPSO, Aug. 5, 1976.

66/ Memo, "Interpretation of Section 192.5(d)(2)", J.C. Thomas, Chief, Southern Region, OPSO, Aug. 16, 1976.

Mr. DeLeon formally responded on October 14, 1976 informing Mr. Thomas that the church involved is in a Class 3 location. 71/ Further, he explained that the fact that a large portion of the building is located more than 100 yards from the pipeline is not a relevant factor to consider in determining the application of Section 192.5(d)(2).

By letter dated February 25, 1977, Williams Brothers Engineering Company requested an interpretation of "normal use" as used in Section 192.5(d)(2). 72/ In an April 6, 1977 telephone interim repose, Mr. DeLeon informed Williams Brothers that normal use should be interpreted to be "based on the frequency of use of playgrounds, outdoor theaters and recreation area." 73/ The record of the telephone response indicates that Mr. DeLeon referred to an interpretation of Section 192.5 published in the November 1976 Advisory Bulletin. 74/ In the Bulletin, Mr. DeLeon explained that a Class 3 location "is intended to apply to places where 20 or more persons assemble more frequently than one week annually." 75/ Further, Mr. DeLeon stated that a cemetery had been interpreted not to require a Class 3 location while a church would require a Class 3 location."

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67/ After being referred to several offices where pipeline docket files should be found, I discovered that the interpretation file to Section 192.5 was located in the Office of Pipeline Safety Regulations. Room 8101.

68/ Memo, "Interpretation of 192.5(d)(2)", "Cesar DeLeon, Acting Director, OPSO, Sept. 14, 1976.

69/ Memo, "Interpretation of 192.6(d)(2)(i)," C. DeLeon, OPSO, Oct. 14, 1976.

70/ Id.

71/ Memo, "Interpretation of 192.5(d)(2)(i)," C. DeLeon, OPSO, Oct. 14, 1976.

72/ Letter, Jim Barton, Williams Brothers Engineering Company, Feb. 25, 1977.

73/ Record of Telephone Call, from C. DeLeon to Jim Barton, Williams Brothers Engineering Company, Apr. 6, 1977, Interpretation File for Section 192.5.

Two months later in his formal response to the February, 1977 inquiry from Williams Brothers, Mr. DeLeon defined normal use as the "activity that is ordinarily engaged in on the premises" and explained that frequency of normal use would be a factor to be considered in determining whether the use of a building or outside area created a risk which is "similar enough to the risk to the areas mentioned in Section 192.5(d)(2)(ii) to warrant application of Class 3 standards." 76/

### C. Enforcement of Class Location Requirements

Mr. Thomas attributes his reluctance to preliminarily assess an operator for violation of MAOP requirements to his belief that the economic impact to the affected operator is too great to rely on the enforceability of an interpretation of Class 3 locations as it relates to the normal use of rural churches. A review of the numerous memoranda submitted by Mr. Thomas with respect to the "normal use" of rural churches, fails to substantiate such a belief as a reasonable basis to refuse enforcement of the MAOP regulations. First, the affected operator, Columbia Gulf, 76/ has not submitted any information in support of Mr. Thomas' allegations that enforcement of the MAOP requirements would result in an economic hardship. Second, the record indicates that only one operator, Texas Gas Transmission Corp., has raised such an argument by comparing the cost of upgrading the affected pipeline facilities with the estimated value of the rural churches situated within the Class 3 location. 77/ Third, in neither case were other compliance alternatives discussed. For instance, the economical implications of decreasing the MAOP to satisfy federal requirements were not mentioned. Finally, although the waiver of compliance filed by Texas Gas has not been acted upon by the Office of Pipeline Safety Regulation, such an alternative is still available to these operators who believe that compliance would be economically unfeasible to their operation. Consequently, economic issues, should not deter a regional chief from enforcing a regulation.

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74/ In the record of his phone conversation, Mr. DeLeon cited the November 1977 Advisory Bulletin. This bulletin, however, did not include an interpretation of 192.5. The applicable interpretation is found in the November 1976 Advisory bulletin. The Bulletin is published monthly by the Office of Pipeline Safety Operations.

75/ OPSO, Advisory Bulletin, Nov. 1976.

76/ Letter, to Leo R. Kenyon, Williams Brothers Engineering Company, from Cesar DeLeon, Acting Director, OPSO, July 5,

1977.

However unclear they may be, Mr. Thomas should enforce the MAOP requirements based on the present interpretation of normal use. Once enforcement occurs, operators adversely affected by the regional assessments have several administrative avenues under the regulations which they may take to contest such regional determinations. For instance, an operator may petition for reconsideration of a Final Order. 78/ In civil penalty cases, statutory criteria which are considered in assessing civil penalties are available. 79/ In compliance order cases, a compromise may be negotiated between the OOE and the respondent of a consent order. 80/ In addition, the operator may file for a waiver of compliance. Consequently, notwithstanding the ambiguity in the present interpretation of normal use and until such ambiguity is clarified, Mr. Thomas must enforce the regulations and permit the operator to contest any unfavorable determination. Perhaps such reaction by the operator would provide an incentive to the OPSO to focus some attention on Mr. Thomas' request.

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76/ Supra, Note 10.

77/ Supra, Note 33.

78/ 49 CFR 190.215.

79/ 49 CFR 190.225.

80/ 49 CFR 190.219.



#### IV. Recommendations

As indicated by a recent case 81/, Class 3 location requirements with respect to rural churches are enforceable despite the alleged ambiguity of the regulatory terms or the alleged adverse economic consequences which may result from their enforcement. To facilitate such enforcement and to clarify the terms of the regulations the following recommendations are made.

##### A. MAOP Requirements.

With respect to Mr. Thomas' request that MAOP requirements for rural church Class 3 locations be amended to permit operation of the affected pipes at a higher MAOP than permitted under the present regulations, it is recommended that the OPSO issue a statement clarifying the intent of such requirement. Mr. Thomas, however, merely desires and needs a clarification of the applicability of the MAOP requirements to the normal use of rural churches. Once he obtains this guidance and formulates an understanding of the regulatory intent, he can reinstate his enforcement proceedings. Further, such clarification will promote and maintain a uniform enforcement program. If the presently required MAOP requirements with respect to rural churches do not enhance the public safety objectives set forth by DOT, a determination reflecting this conclusion must be made and the regulation amended to indicate the Department's intent.

##### B. "Normal Use".

A clarification of the 1976 interpretation of "normal use" issued by Mr. DeLeon is necessary. The interchangeable use of such terms as "regular intervals", "frequency of use" or the "activity" conducted in the area to define "normal use", is confusing to the person in the field. As presently defined, the inspector cannot determine whether normal use of an area used by 20 or more persons is determined by the number of times the persons congregate there or by the activity conducted on the premises. The only clear explanation given by Mr. DeLeon is that "normal use" does not apply to an area that is used for no more than one week annually. This implies that any area used by 20 or more persons for more than one week annually is considered to be under "normal use" and therefore, subject to the "Class 3 location requirements. If this is the intent of the MTB, a written interpretation stating such intent must be issued. If

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81/ Recently, the Chief, Central Region assessed Texas Eastern Transmission Corporation a \$15,000 civil penalty.

both frequency of use and the activity conducted in the affected area determine normal use then an interpretation reflecting such intent must be written.

The record was silent as to the method used to determine the interpretation of "normal use". Consequently, if not yet considered, it is recommended that a committee composed of individuals knowledgeable in the field review and establish the regulatory intent of "normal use". Although the Class 3 location requirement can be enforced as presently interpreted, a clarification of the term "normal use" will expedite enforcement and hopefully eliminate future interpretation issues.

### C. Waiver.

The most important recommendation with respect to the waiver is to prescribe procedural guidelines which establish a definite time period within which a waiver determination must be issued. This will preclude the Office of Pipeline Safety Regulation (OPSR) from permitting a waiver request to sit "on the back burner" for years, as is now the case with the Texas Gas waiver request.

Further, evaluation criteria to be reviewed by the OPSR prior to issuing the determination for a waiver must be established. For instance, the OPSR could base its waiver determination on the following factors:

1. Operating and maintenance history of the affected operator.
2. Evaluation of the present operating pressures and the effects of reducing such pressures, i.e. curtailment of consumer services or economical hardship imposed on the operator, etc.
3. Age of the underground structures.
4. Type of materials used in the affected pipe.
5. Life expectancy of the pipe line affected by the rural church Class 3 location.
6. Characteristics and properties of the soil which may affect the rate of pipe corrosion thereby affecting the possibility of leakage, etc.
7. Amount of vehicular traffic which imposes special strains on pipe materials.

The waiver provision offers the Department an opportunity to maintain a flexible enforcement program by permitting it to consider various factors which could have an affect on the public safety theme prevalent throughout the pipeline safety programs. Such an enforcement program cannot be maintained, however, without the serious commitment by the OPSR to issue determinations on waiver requests in a timely fashion. Lengthy

delays in making waiver determinations or avoiding the determination altogether will only adversely affect the credibility of the entire program. Further waivers issued without the basis of specific criteria, will diminish the importance of the enforcement program.

V. Conclusion.

In conclusion, my research indicates that Mr. Thomas appears to be the only party to have challenged the applicability of the Class 3 location requirements with respect to the normal use of rural churches. Nonetheless, a clear and brief interpretation of these requirements will assist other Regional Chiefs confronted with similar cases to resolve the issues without having to wait three, four, or five years.