

U.S. Department  
of Transportation

400 Seventh Street, SW  
Washington, DC 20590

**Research and  
Special Programs  
Administration**

Mr. David A. Renli  
Inspector  
Sioux Falls Fire Department  
2820 S. Minnesota Avenue  
Sioux Falls, S.D. 57105

Dear Mr. Renli:

Your letter raises several questions relevant to the authority of the Sioux Falls Fire Department to address the safety of hazardous liquid pipeline terminals in Sioux Falls. The terminals you have specifically identified are the Amoco Terminal and the Williams Pipeline Terminal. The terminals you describe consist of breakout tanks, terminal storage tanks, their related piping, and truck loading racks connected to terminal tanks by separate piping.

Since your letter, Congress codified the pipeline safety statutes at 49 U.S.C. Chap. 601. This codification replaces all preexisting pipeline safety authority, but made no substantive change to the law. The new statutory authority has been substituted in your questions.

Questions:

1. In the systems noted above where does 49 U.S.C. Chap. 601 stop?

Pipeline transportation is complete when the hazardous liquid is delivered to a terminal storage tank, or to a breakout tank to the extent subsequent transportation is by another mode. The piping within the terminal used exclusively to transfer product from a storage or breakout tank to a truck loading rack and the truck loading rack itself are not part of pipeline facilities subject to regulation under 49 U.S.C. Chap. 601. In such a situation, pipeline safety jurisdiction stops at the outlet of the tank.

We recognize that the Research and Special Programs Administration's (RSPA) position on jurisdiction in terminal areas could be subject to varying interpretation. In a 1990 letter, Philip Sharp, then Chairman of the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, posed a series of questions to RSPA concerning our view of jurisdiction under the pipeline safety laws and regulations. One series of questions was grouped under the title "Above Ground Storage Tanks." The RSPA response, indicating that "all parts of a tank farm" are considered to be pipeline facilities, must be read in context. Neither the questions nor the responses in the group of questions mentioned truck loading racks. The facilities being discussed were the terminals and the tanks and related piping in the terminals, with the emphasis on the distinction between breakout and terminal tanks.

2. What role does a local jurisdiction play in community safety as it pertains to pipeline terminals?

Local officials have a clear role in emergency response that is encouraged by the pipeline safety standards. The pipeline safety standards require that pipeline operators establish and maintain liaison with local emergency response personnel. 49 C.F.R. §195.402(c)(12). In addition, pipeline operators must have procedures for notifying local officials of pipeline emergencies and for coordinating with them preplanned and actual responses to those emergencies. 49 C.F.R. §195.402(e)(7). Local officials may also participate in local response planning required of pipeline operators by regulations adopted under the Oil Pollution Act of 1990.

In addition, although there is no role clearly provided for local jurisdictions, nothing in Part 601 prohibits them from being involved in matters outside the scope of 49 U.S.C. Chap. 601. These include not only regulation of non-pipeline facilities, but also issues surrounding the siting of pipelines. The location or routing of hazardous liquid pipeline facilities is expressly outside the scope of Chap. 601. 49 U.S.C. §60104(e). There may be other law, such as State law, that limits local involvement.

3. Does 49 U.S.C. Chap. 601 prohibit local regulation enforcement on new installation of tanks and piping?

To the extent a local jurisdiction attempts to impose safety standards on the design and construction of new interstate pipeline facilities, 49 U.S.C. §60104(c) provides:

A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.

It has always been clear that this language means that state and local officials may not impose safety standards on interstate pipeline facilities when there is an applicable pipeline safety regulation. Pipeline safety standards address the design, construction, hydrostatic testing, and operation and maintenance of pipeline facilities, as well as drug and alcohol testing of individuals who perform certain safety-related activities on those facilities.

The United States Court of Appeals for the Eighth Circuit has issued an opinion on the preemptive effect of 49 U.S.C. §60104(c) that has gone somewhat farther. Kinley v. Iowa Utilities Board, 999 F.2d 354 (8th Cir. 1993). (Sioux Falls is located within the jurisdiction of this Court.) In Kinley, the interstate pipeline at issue operated at less than 20% SMYS and was therefore excepted from the Federal pipeline standards. The State regulatory agency argued that the State could fill in the gap of Federal regulation. The Court held that state and local authorities could not impose safety standards applicable to interstate pipeline facilities even in the absence of an applicable Federal pipeline safety standards.

However, as noted above, because 49 U.S.C. Chap. 601 expressly excludes from coverage in pipeline safety standards the location or routing of pipeline facilities, the location of new pipeline facilities may be subject to state or local regulation. Furthermore, state or local regulation of facilities that are not pipeline facilities is not prohibited by 49 U.S.C. §60104(c).

4. Most of the tanks at these facilities serve as both breakout tanks and distribution tanks. Does this factor change the character of use defined by 49 U.S.C. Chap. 601?

If a tank is used as a breakout tank at any time, it is classified as a breakout tank for purposes of the Federal pipeline safety standards regardless of its use as a distribution tank at other times.

5. As mentioned in a document to Senator Sharp, Committee on Energy and Power from the RSPA, March 12, 1990, the Pickett Road Terminal in Fairfax, Virginia is with the exception of one tank owned at that time by Colonial, not regulated by 49 U.S.C. Chap. 601 because it “does not pose an undue hazard to the public”. Does this statement advocate jurisdictional controls to the local authority?

No. The statement indicates the rationale for RSPA’s decision not to extend pipeline safety standards to terminal tanks that were not used as breakout tanks. When that decision was made in 1981, environmental protection was not explicitly part of the pipeline safety mission. A 1992 change in the pipeline safety laws added environmental protection to our mission. RSPA is reevaluating our role in addressing terminal tank issues as we more closely consider this aspect of our mission.

6. Are plans and specifications reviewed and field inspections done on all major projects by officers of the DOT Office of Pipeline Safety to ensure compliance with requirements of 49 U.S.C. Chap. 601 at these facilities in Sioux Falls?

RSPA’s Office of Pipeline Safety regional staff regularly conducts field and record inspections of pipeline facilities. Our last inspection of the Williams terminal in Sioux Falls was conducted on August 25-26, 1994. Because the Amoco terminal in Sioux Falls does not include breakout tankage, we do not inspect the terminal. We do not routinely review plans and specifications for new facilities, nor are field inspections done on all major projects.

7. Since we do not understand completely which lines are or are not regulated, and understand that a portion of the Nation’s pipelines fall into something called the 20 % SMYS exemption, could you tell us definitively if the pipelines coming into Sioux Falls are regulated and where these regulations begin and end for each terminal.

The “20 % SMYS exemption” refers to an exception from regulation of certain pipelines that operate at a stress level of 20 % or less of the specified minimum yield strength of the pipe. The exception is found at 49 C.F.R. §195.1(3). However, the 20 % SMYS exception is being revisited by RSPA. By a final rule published July 12, 1994, the exception was lifted from pipeline segments that carry highly volatile liquids, are located in populated areas, or traverse navigable water. 59 Fed. Reg. 35465. RSPA also intends to reexamine the exception for pipelines in environmentally sensitive areas.

The 20 % exception is not applicable to a terminal if the pipeline system of which the terminal is a part is operated at higher stress levels.

Because of these limitations, the 20 % SMYS exception does not apply either to the pipelines coming into Sioux Falls or to the Amoco and Williams terminals in Sioux Falls.

8. If these pipelines fall into this exemption does this mean that these systems go unregulated by Federal programs?

Pipelines which meet the exception would not be subject to RSPA's pipeline safety standards. However, pipeline terminals are subject to oil spill response planning regulations required by the Oil Pollution Act of 1990 (which amended the Federal Water Pollution Control Act). 33 U.S.C. §1321(j). RSPA regulations generally applicable to those parts of the facilities that we regulate under 49 C.F.R. Part 195 are found at 49 C.F.R. Chap. 194; Environmental Protection Agency regulations applicable to the remainder of the terminal are found at 40 C.F.R. Chap. 112.

Other Federal regulations and laws may also apply. These include the prohibitions against oil spills into navigable water (the Federal Water Pollution Control Act, enforced by EPA), Occupational Safety and Health Administration regulations protecting employees, and cargo loading regulations issued under hazardous materials laws (49 U.S.C. Chap. 51; 49 C.F.R. Part 177).

9. If the former is true, are there any regulations that preempt local intervention?

As noted, the "former" (lack of any Federal regulation of the terminal facilities) is not true. If the question is narrowed to whether local safety regulation of pipeline terminals is preempted in the absence of applicable Federal pipeline safety regulations, the answer depends on whether the facilities are pipeline facilities. If they are pipeline facilities, the Kinley case discussed in response to question 3 indicates that the United States Court of Appeals for the Eighth Circuit would find preemption regardless of the absence of Federal pipeline safety regulation. The Kinley case does not apply if the facilities are not pipeline facilities.

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