U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

FEB 2 8 2012

Mr. Wesley Christensen
Senior Vice President
NGL Operations
ONEOK NGL Pipeline, L.P.
100 West Fifth Street
Tulsa, OK 74103-4298

Dear Mr. Christensen:

By letter dated August 4, 2011, you asked the Pipeline and Hazardous Materials Safety Administration (PHMSA) for a written interpretation on the applicability of 49 CFR Part 195 to your natural gas liquids (NGLs) processing plant in Bushton, Kansas. Specifically, you asked whether certain facilities at the plant fall within the scope of the exception in 49 CFR 195.1(b)(8) for the transportation of hazardous liquids through production, refining, or manufacturing facilities and associated storage and in-plant piping systems under 49 CFR 195.2.

The minimum Federal safety standards in Part 195 apply to any facilities at the Bushton plant that are used directly for the transportation of hazardous liquids by pipeline, but not to any facilities that are only used to fractionate NGLs.

Background

In your letter, you state that the plant receives NGLs from pipelines that are owned by your company or other third parties, that the NGLs are processed on the grounds of the plant using certain piping systems and underground storage facilities, and that refined products are then re-injected back into pipelines for continued transportation.

You further state that you agree that Part 195 applies to the incoming and outgoing pipelines and any devices within the boundaries of the plant that are necessary to ensure the safe operation of those pipelines under 49 CFR § 195.406(b). However, you believe that Part 195 does not apply to any of the other facilities at the plant by virtue of the exception in § 195.1(b)(8) for production, refining, or manufacturing facilities (and associated storage or in-plant piping systems).

You note that those facilities are covered by the Occupational Safety and Health Administration's Process System Management requirements in 29 CFR 1910.119, and that the Bushton plant is not used for the transportation or storage of oil; therefore, the limitations

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.

established in PHMSA's Memoranda of Understanding with the U.S. Environmental Protection Agency are not relevant.

After providing additional information on the inspection history of the Bushton plant, you conclude by asking for a response to two questions:

1. If a pipeline delivers or receives product to or from the Bushton facility, is the jurisdictional boundary between the PHMSA-regulated pipeline and the facility processing operations delineated as described by the definition of "in-plant piping system" in § 195.2 and, therefore, not subject to PHMSA's jurisdiction?

2. Is the underground storage at the Bushton facility (here, underground caverns) "storage associated with refining" and, as such, within the exception set forth in §195.1(b)(8) and, therefore, not subject to PHMSA's jurisdiction?

Analysis

Section 195.1(b)(8) states that the pipeline safety standards in Part 195 do not apply to the "[t]ransportation of hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities." Section 195.2 further states that "[i]n-plant piping system means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline or other mode of transportation, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b)."

The exception in § 195.1(b)(8) is based on section 60101(a)(22) of the Pipeline Safety Laws.[1] That provision states that PHMSA does not have the authority to regulate the "mov[ement] of hazardous liquid through . . . onshore production, refining, or manufacturing facilities; or storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities." According to the legislative history, Congress enacted that prohibition in the Hazardous Liquid Pipeline Safety Act (HLPSA) of 1979 (P.L. 96-129) after concluding that "such lines present[ed] insufficient risk to life and property to require regulation." S. REP. NO. 96-182 (May 15, 1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1988.

PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), established the definition in § 195.2 for in-plant piping systems in a 1994 final rule (59 FR 33388). RSPA explained that "the physical distinction between a regulated pipeline serving a plant and unregulated in-plant piping [wa]s unclear" without that definition. RSPA also noted that "[t]he aim of the proposed definition was to distinguish unregulated piping, not to limit the jurisdiction of other government agencies," and further stated that if the in-plant piping did not include a device to control pipeline pressure, then the application of Part 195 would terminate at the plant boundary (59 FR 33389). RSPA observed that "[s]ince neither the HLPSA nor its

[1] Another PHMSA predecessor, the Materials Transportation Bureau, relied on that provision in promulgating the original regulatory exception for production, refining, or manufacturing facilities and associated storage or in-plant piping systems in a 1981 final rule (46 FR 38358).

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.

legislative history explain "in-plant piping," the agency had "adopt[ed] an ordinary, reasonable understanding of the term." *Id.*[2]

With regard to your first question, the exception in § 195.1(b)(8) applies to any facilities at the Bushton plant that are used for the production, refining, or manufacturing of NGLs, including any associated storage or in-plant piping systems as defined in § 195.2. It does not, however, apply to any facilities that are used directly in the transportation of hazardous liquids by pipeline.[3] Such facilities fall within the scope of PHMSA's statutory authority to regulate the movement of hazardous liquids by pipeline under 49 U.S.C. § 60101(a)(22) and present a sufficient risk to public safety to warrant regulation under Part 195.

The information submitted with your request and obtained from PHMSA's Central Region Office indicates that Bushton is not a traditional NGL processing plant. In most cases, all of the NGLs that are delivered to these plants undergo a chemical transformation as part of the fractionation process before being sent out for continued transportation as refined products. In the case of your plant, however, a shipper has the ability to direct NGLs to bypass the plant, or to divert those products to private or co-mingled storage, without processing. Consequently, only the piping and equipment used to facilitate the fractionation process meets the "in-plant piping" definition for purposes of the exception in § 195.1(b)(8).

With regard to your second question, some of the products received at the Bushton plant are stored underground and placed back into the pipeline system without processing. Product is also transported through the manifold piping and directly back into regulated pipelines without being processed. These portions of the storage field and manifold piping are used for transportation of hazardous liquids by pipeline and are regulated by PHMSA under Part 195.

---

[2] In the preamble to the 1994 final rule, RSPA stated that the definition of in-plant piping would include piping that crosses a single public thoroughfare on the grounds of plant. In a subsequent letter of interpretation, RSPA stated that railroad crossings, like road crossings, would qualify as public thoroughfares for purposes of that definition as well. Interpretation #PI-98-006 (Nov. 18, 1998).

[3] *See* PHMSA Interpretation #PI-96-015 (stating that "[a]lthough Part 195 does not define manufacturing facilities, furthering pipeline transportation is not the primary function of such facilities," and that "[t]he Skid 50 Pad facilities are operated primarily to further the transportation of natural gas liquids by pipeline;" therefore, those facilities are not exempt from Part 195) (Jul. 22, 1996).

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.

Because PHMSA does not have specific regulations at this time for underground hazardous liquid storage facilities, the application of Part 195 would stop at the wellhead site valve. The specific valve at the wellhead site can be wellhead, casing head, choke assembly, or line valve based on your operations and maintenance manual.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at 202-366-4046.

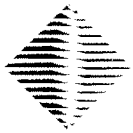
Sincerely,

John A. Gale
Director, Office of Standards
and Rulemaking

cc: Environmental Protection Agency
Occupational Safety and Health Administration

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.

PI-11-0012



ONEOK PARTNERS

AUG 19 2011

August 18, 2011

John Gale
Director, Standards and Rulemakings (PHP-30)
United States Department of Transportation,
1200 New Jersey Avenue, SE
Washington, D. C. 20590-0001

Subject: Request for Written Interpretation

Dear Mr. Gale:

On August 4, 2011, representatives from ONEOK Partners, L.P. (ONEOK), met in Kansas City, Missouri, with David Barrett, Greg Ochs, Hans Shieh, and Michael Falk of the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) to discuss regulations for the transportation of hazardous liquids through refining facilities and the underground storage and in-plant piping systems associated with such facilities. It was suggested at that meeting that we write to you to obtain a written interpretation of PHMSA's position on the matters we wished to have clarified.

The Layout

ONEOK owns a processing (refining) facility located in Bushton, Kansas ("Bushton" or "the Facility") (see Attachment A, Aerial View 1). The Facility consists of fractionation operations and associated in-plant piping systems and underground storage caverns. Bushton receives natural gas liquids (NGL) from PHMSA Part 195 jurisdictional pipelines (Pipelines), some of which are owned by ONEOK and others which are owned by third parties. Diagram 1 (Attachment B) shows the general layout of the Bushton Facility and the functional break (vertical dotted centerline) between ONEOK's processing facilities (refining) and PHMSA-jurisdictional Pipeline facilities. The Bushton layout and jurisdictional boundaries are similar to those that may be found in oil refineries where PHMSA-jurisdictional pipelines deliver crude oil into a refinery, where it is processed, stored, and delivered via tank car, truck rack, or pipeline system.

At Bushton, the various PHMSA-regulated Pipelines (e.g., the North System (in)) deliver NGL to the Facility. The liquid is then transported through the Facility (fractionation, associated in-plant piping, storage) and, eventually, product leaves the Facility via Pipeline (e.g., line 5, North System, 800 line out).

The Facility cannot operate without its associated in-plant piping and storage systems, the functions of which are to transfer NGL between the various processing operations at Bushton.

100 West Fifth Street • Tulsa, OK 74103-4298
P.O. Box 871 • Tulsa, OK 74102-0871
www.oneok.com

The underground storage caverns associated with the Bushton Facility are not "breakout tanks" under 49 CFR 195.2 because they are not tanks.[1]

Overpressure devices are located on ONEOK property where required for safe operation per 49 CFR 195.406(b) and are treated as jurisdictional to PHMSA.[2] ONEOK has maintained the property such that the Pipelines, including piping between pressure control devices and the Pipelines, are treated as jurisdictional to PHMSA, while the Bushton Facility (including associated in-plant piping leading up to any pressure control device, the fractionation system, and associated underground storage caverns) are treated as non-jurisdictional to PHMSA pursuant to 49 CFR § 195.1(b)(8) and 195.2 (in-plant piping). The locations of these Pipeline facilities are shown in Attachment A, Aerial View 2.

According to 49 CFR § 195.1(b)(8), Part 195 does not apply to transportation of hazardous liquids through refining facilities or storage or in-plant piping systems associated with such facilities. "In-plant piping" is defined in § 195.2 as the piping that is located on the grounds of a plant and used to transfer hazardous liquid between plant facilities or between plant facilities and a pipeline or other mode of transportation, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b). It is noteworthy that the 195.1(b)(8) refinery facility exemption applies to transportation *through* facilities or storage or in-plant piping systems *associated with* such facilities. This is in contrast to the 195.1(b)(9)(ii) terminal facility exemption, which requires that to be exempt, the piping must be *exclusively* used for the terminal facility.

Management Systems

The vertical dotted centerline on Diagram 1 depicts the functional division between Pipelines and the Facility (refining) operations. As a result, it also depicts the division between the management systems under which the personnel and facilities operate. Bushton is operated under a Process Safety Management (PSM) system, as required by the Department of Labor's Occupational Safety and Health Administration (OSHA) pursuant to 29 CFR 1910.119 (Plant). The Pipelines are operated under PHMSA Part 195. The Facility and its personnel operate and are trained per OSHA's PSM system (29 CFR 1910.119), while the Pipelines and their personnel operate and are trained per PHMSA's Part 195 regulations (49 CFR Part 195). These regulatory bodies have different areas of concern, approaches, and regulatory terminology and definitions; as a result, their management systems vary (including their operating and maintenance procedures, training, and required documentation). Because these two systems do not align in a manner allowing for consistent application of the two systems, OSHA and DOT have consistently stated their intent to clearly set forth each agency's boundaries to avoid duplication

[1] *See* Amendment 195-22, Final Rule, effective date July 27, 1981, wherein *Storage Subject to Regulation* is described.

[2] *See* PHMSA Response Letter to Conoco Inc., PHMSA Interpretation # PI-91-008 (Mar. 25, 1991) (Attachment C) and PHMSA Response Letter to Marathon Ashland Pipe Line, LLC, PHMA Interpretation # 195.1 61 (February 15, 2001) (Attachment D), describing the demarcation between non-jurisdictional in-plant piping and jurisdictional pipelines.

or uncertainty within the federal requirements.[3] Again, both the Facility and the Pipelines are subject to safety regulations, but through different agencies. While the application of the regulations of the two agencies provide for an equivalent level of safety, the management processes and enforcement practices of the two agencies are not equivalent and would essentially require an operator to have two sets of procedures for the same piece of pipe to ensure compliance with the two agencies' regulations. This does not improve, and in fact may have a negative impact on safety.

Non-OSHA/DOT Jurisdictional Delineation

In addition to the DOT and OSHA division of jurisdiction discussed above with respect to management and safety systems, the February 4, 2000 Memorandum of Understanding (MOU) between DOT and the Environmental Protection Agency (EPA) for the purposes of defining jurisdictional boundaries at particular plants, which specifically addressed "breakout tanks" and storage as regulated by DOT in 49 CFR 194 and the EPA in 40 CFR 112.20.[4] This 2000 MOU between EPA and DOT reaffirmed the 1971 MOU between the same agencies wherein they defined transportation and non-transportation related facilities for the purpose of determining which agency regulated a facility's compliance with the Clean Water Act's oil pollution prevention requirements.[5]

This delineation was for the express purpose of clarifying whether, *for the purposes of oil pollution prevention plans,* a facility must comply with DOT (49 CFR 194) or EPA (40 CFR 112.20) regulations, or both. Because of the types of products handled at Bushton, the Facility is exempt from these oil pollution plan requirements because NGL is not "oil." As a result, the diagrams in the 2000 MOU between EPA and DOT regarding jurisdiction over oil pollution

[3] *See* the 1972 MOU between OSHA and DOT (Attachment E).

[4] The 2000 MOU between DOT and EPA (Attachment F) noted that "complex facilities" may have dual EPA and DOT jurisdiction and sought to delineate which agency had jurisdiction in a variety of contexts, including where overlapping or concurrent jurisdiction over the same facilities or processes do or do not exist, making use of several diagrams for reference. It is notable that Section V states the rules and enforcement practices of both agencies are substantially equivalent, thereby meaning that dual jurisdiction is two agencies applying substantially the same set of rules and practices. An example of "dual jurisdiction" which is addressed at page 2 in the 2000 MOU, "is a bulk storage container serving as a tank storing oil while also serving as a breakout tank for a pipeline or other transportation purposes." As noted earlier, the underground storage caverns at Bushton are not tanks, and they do not store "oil" as defined in 49 CFR 194.5 and 40 CFR 112.2.

[5] The 1971 MOU between DOT and EPA (Attachment G) provides that the following are non-transportation related and within EPA jurisdiction, not DOT jurisdiction: refining facilities, including all equipment and appurtenances related thereto, in-plant processing units, storage units, piping, drainage systems, and waste treatment units used in the refining process; and oil storage facilities, including all equipment and appurtenances related thereto, as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage pumps, and drainage systems used in the storage of oil, *but excluding in-line or breakout storage tanks needed for the continuous operation of a pipeline system.* Transportation-related facilities, within DOT jurisdiction and not EPA jurisdiction, include: pipeline systems, including pumps and appurtenances related thereto, as well as in-line or breakout storage tanks needed for continuous operation of a pipeline system, *but excluding* pipelines used for transportation within the confines of a nontransportation-related facility or terminal which are not intended to transport oil in interstate or intrastate commerce. *See* the 1971 MOU between DOT and EPA, sections II(1)(E), II(1)(F), II(2)(C).

prevention plans are irrelevant to the issue of which of two other competing agencies – DOT or OSHA – has jurisdiction regarding management systems. Despite the fact that these Diagrams are irrelevant to the division of jurisdiction between OSHA and DOT, PHMSA (Central Region) has applied them to the Bushton Facility's associated underground storage caverns (as described in the Inspection History section below).

Inspection History

The various states and regions carrying out the inspection of facilities as described herein have typically applied the in-plant piping system definition such that the division between the Facility and the Pipelines is consistent with Diagram 1 (Attachment B). This has been ONEOK's experience with similar facilities owned and operated by ONEOK in PHMSA's SW Region. Additionally, after reading the interpretation offered by PHMSA to Cabot Oil & Gas Corporation for a facility located in West Virginia,[6] ONEOK contacted the State of West Virginia's Pipeline Safety Office to discuss their application of the jurisdictional boundaries where inspection of similar facilities occur. It is our understanding from that discussion that ONEOK's position on the boundary between in-plant piping and pipelines is consistent with West Virginia's inspection practices. It was only recently that ONEOK has experienced a different inspection perspective, which we believe is inconsistent with the regulations, guidance and interpretation documents, and the inspection practices in other regions.[7]

In 2005, PHMSA (Central Region) inspected the pipelines adjacent to the Bushton Facility and applied the breakout tank/storage diagrams found in the 2000 MOU between DOT and EPA for the purposes of defining jurisdictional boundaries *between OSHA and DOT* at Bushton. PHMSA (Central Region) has taken these diagrams (designed to delineate agency oversight between DOT and EPA for compliance with oil pollution prevention regulations) and applied them to the facilities at Bushton to conclude that DOT (as opposed to *OSHA*) has jurisdiction over the Facility's management system. As mentioned above, the 2000 MOU between EPA and DOT has nothing to do with which agency – DOT or OSHA – has jurisdiction over the Facility's management system. In misapplying the EPA/DOT MOUs to a DOT/OSHA jurisdictional situation, PHMSA (Central Region) has apparently created its own term - "breakout storage facilities". ONEOK does not find this definition in 49 CFR 195, 49 USC 60101, or in any letters of interpretation issued by PHMSA.

ONEOK has asserted its position that the facilities within Bushton are in fact *associated with* Bushton's processing functions and, as such, 49 CFR §§ 195.1(b)(8), 195.2 apply to exempt the Facility and its associated in-plant piping and storage from PHMSA Part 195 jurisdiction. As a result of this exemption, the Facility is not required to change its OSHA PSM system to be compliant with PHMSA's Part 195 requirements.

---

[6] *See* PHMSA Response Letter to Cabot Oil & Gas Corporation 195.1 058 (Dec. 2, 1998), describing the demarcation between non-jurisdictional in-plant piping and jurisdictional pipelines (Attachment H).

[7] *See* Vectren Corp., 2003 WL 25429807 (Dep't of Transp. Dec. 31, 2003) (final order), which distinguishes between a jurisdictional breakout tank and a non-jurisdictional process tank or process vessel (Attachment I). The Vectren Corp. final order is an example of the Central Region inappropriately treating storage as a breakout tank and issuing NPVs for failing to have Part 195 compliant policies and procedures when, as evidenced by the Office of Pipeline Safety's order overturning the decision, the storage was in fact not jurisdictional to Part 195.

In continuing ONEOK's efforts to operate in a safe manner and to ensure compliance with the various regulations applicable to this Facility, ONEOK requests that you clarify PHMSA's position on the following two subjects:

1. If a pipeline delivers or receives product to or from the Bushton Facility, is the jurisdictional boundary between the PHMSA-regulated Pipeline and the Facility processing operations delineated as described by the definition of "in-plant piping system" in 49 CFR 195.2 and therefore not subject to PHMSA jurisdiction ?

2. Is the underground storage at the Bushton Facility (here, underground caverns), "storage associated with refining" and, as such, within the exception set forth in 49 CFR 195.1(b)(8) and therefore not subject to PHMSA jurisdiction?

Thank you for your consideration of this matter. Should you have questions or need further information, you may either contact me at (918) 588-7600, or Vicky Hale, Vice President and Associate General Counsel, at (918) 588-7949.

Very truly yours,

Wes Christensen/mga

Wesley Christensen
Senior Vice President, NGL Operations
Oneok NGL Pipeline, L. P.

Attachments

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Chief Counsel

AUG 08 2012

Mr. Vince Murchison, Esq.
SNR Denton, US LLP
2000 McKinney Avenue
Suite 1900
Dallas, TX 75201-1858

Dear Mr. Murchison:

By letter dated May 25, 2011, on behalf of ONEOK NGL Pipeline, L.P. (ONEOK), pursuant to 49 C.F.R. § 190.211(b)(2), you asked the Pipeline and Hazardous Materials Safety Administration (PHMSA) for a written interpretation on the applicability of the federal pipeline safety laws and regulations to ONEOK's natural gas liquids (NGLs) facility in Bushton, Kansas (Request). You expressed the view that, with the exception of devices and associated piping necessary to control pressure in the outbound pipelines, the piping on the grounds of the Bushton facility is an "in-plant piping system" that qualifies for the exemption in 49 U.S.C. § 60101(a)(22) for the transportation of hazardous liquids through onshore production, refining, or manufacturing facilities; or storage or in-plant piping systems associated with such facilities (hereinafter, the "Production, Refining or Manufacturing Facility Exemption").[1] You believe that the regulatory interpretation issued by PHMSA to ONEOK on February 28, 2012 concluding that certain pipeline facilities on the grounds of the Bushton facility were exempt from the Part 195 regulations but others were not had impermissibly narrowed the Production, Refining or Manufacturing Facility Exemption and you requested that the issue be reevaluated.[2]

Background

In your Request, you state that the Bushton facility receives NGLs from pipelines that are owned by ONEOK or third parties and the liquids are then transported through the Bushton facility.[3] You state that Bushton facility operations include the processing of NGL mixture in a fractionation plant on the grounds of the Bushton facility; and that purified liquids such as ethane, propane, butanes, and C5 product eventually leave the Bushton facility by pipeline.[4]

---

[1] Request at 11.

[2] *Id.*

[3] Request at 3.

[4] Request at 4.

The Pipeline and Hazardous Materials Safety Administration provides written explanations of the federal pipeline safety laws and regulations in the form of interpretation letters. These letters reflect the agency's current application of the laws and regulations to the specific facts presented by the person requesting the interpretation. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

You refer to these liquids collectively as "purity product" as a way of distinguishing them from "refined products" which is a generally accepted term for describing the fuels and other refined petroleum products that are produced in crude oil refineries. We further understand that some NGLs transported to the Bushton facility by pipeline, possibly even the majority of the NGLs, transit the facility or are stored underground and leave the facility by pipeline without undergoing any processing in the fractionation plant.[5]

After providing additional views and information on the scope of the relevant statutory provisions and regulations, you conclude by asking two questions:

1. Is Bushton a refining facility, and are the storage and in-plant piping systems at Bushton associated with such facility?

2. Is the piping system at Bushton located on the Plant grounds, and does the piping system transfer hazardous liquid (a) between plant facilities, or (b) between plant facilities and a pipeline?[6]

Analysis

PHMSA is responsible for regulating the safety of the transportation of hazardous liquids by pipeline. The term "Pipeline or pipeline system" is defined in 49 C.F.R. § 195.2 as "all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks." The term "Pipeline facility" is defined in 49 C.F.R. § 195.2 as "new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide." As you correctly noted in your Request, under 49 U.S.C. § 60101(a)(22), "transporting hazardous liquid" includes "the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline."

In a 1981 final rule, PHMSA's predecessor agency established regulations implementing the statutory Production, Refining or Manufacturing Facility Exemption (46 FR 38358). 49 C.F.R. § 195.1(b)(8) states that the pipeline safety standards in 49 C.F.R. Part 195 do not apply to the "[t]ransportation of hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities." Section 195.2 further states that "[i]n-plant piping system means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline or other mode

---

[5] This is based on first hand observations by PHMSA inspectors but was neither denied nor acknowledged in your request. ONEOK did not provide PHMSA with the ratio of fractionated to non-fractionated NGLs being transported through the Bushton facility.

[6] Request at 10-11.

The Pipeline and Hazardous Materials Safety Administration provides written explanations of the federal pipeline safety laws and regulations in the form of interpretation letters. These letters reflect the agency's current application of the laws and regulations to the specific facts presented by the person requesting the interpretation. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

of transportation, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b)."

Your first question concerning whether or not the Bushton facility is a refining facility is a key question. While the Production, Refining or Manufacturing Facility Exemption applies to facilities that are used for production, refining, or manufacturing, as you correctly point out in your Request there is a separate regulatory exemption in § 195.1(b)(9)(ii) for transporting hazardous liquids through "facilities located on the grounds of a materials transportation terminal if the facilities are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline (hereinafter, the "Terminal Facility Exemption"). A materials transportation terminal is a facility where materials are received, stored and/or transferred, and in some cases processed and further transported. As this is the case with the Bushton facility, it is a materials transportation terminal (that has a fractionation plant located on its grounds). This means that Bushton facility piping used to transfer hazardous liquids between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline is exempt from Part 195 pursuant to the Terminal Facility Exemption. This leads to the question of whether or not the processing that takes place in the fractionation plant at the Bushton facility means that the entire Bushton facility should also be considered to be a refining facility for purposes of the Production, Refining or Manufacturing Facility Exemption.

In your Request, you noted that PHMSA's February 28, 2012 interpretation was based on factual information that was not presented by ONEOK. This included statements by PHMSA that "Bushton is not a traditional NGL processing plant" and that NGLs undergo "a chemical transformation as part of the fractionation process before being sent out for continued transportation as refined products." You stated that clarification on these factual issues was needed because, to the contrary, the fractionation process at Bushton involves "separating" each compound in the NGL mixture by applying temperature and pressure differentials but that "no chemical change takes place" to the compounds.[7] We believe the clarified description of the fractionation process you provided in your Request is accurate.

Notwithstanding the clarifications you provided, you state your continued belief that the processing that takes place in the fractionation plant should result in the Bushton facility being considered a refinery.[8] A refinery, however, is a facility in which refined products are produced by changing the chemical and physical characteristics of petroleum, exclusive of the process of separating and removing gas (as well as other compounds) and generally purifying the petroleum.[9] Generally speaking, as various hydrocarbons are transported from producers to end users, the separation of compounds and the purification of products takes place in various stages and in various facilities. The separation of compounds in the NGL mixture at the Bushton

---

[7] Request at 4.

[8] *Id.*

[9] See, *e.g.*, definition of "Refiner," *Manual of Oil and Gas Terms*, Williams and Meyers, Third Edition.

The Pipeline and Hazardous Materials Safety Administration provides written explanations of the federal pipeline safety laws and regulations in the form of interpretation letters. These letters reflect the agency's current application of the laws and regulations to the specific facts presented by the person requesting the interpretation. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

facility in the fractionation plant means that the fractionation plant itself is a processing plant (that is on the grounds of a materials transportation terminal), but this does not make the entire Bushton facility a refinery.[10] Because the Bushton facility is a terminal with a processing plant, not a refinery, it does not qualify for the Production, Refining or Manufacturing Facility Exemption.[11]

We can now turn to the question of how the Terminal Facility Exemption applies to various parts of the Bushton facility. As noted above, the Terminal Facility Exemption is a regulatory exemption in § 195.1(b)(9)(ii) for the transportation of hazardous liquids "[t]hrough facilities located on the grounds of a materials transportation terminal if the facilities are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline." Therefore, piping on the grounds of the Bushton facility used exclusively to transfer hazardous liquids to non-pipeline modes of transportation (such as truck or rail car) qualifies for the Terminal Facility Exemption in § 195.1(b)(9)(ii) and is exempt from the Part 195 regulations.

The remainder of the pipeline system at the Bushton facility is not expressly exempted by the Terminal Facility Exemption in § 195.1(b)(9)(ii) (or any other statutory or regulatory exemption), but some portions of this piping system are nevertheless unregulated because to date PHMSA has not promulgated specific regulations that apply to them. The fractionation equipment in the fractionation plant and the piping and storage wells used exclusively for the fractionation process are unregulated for this reason as are the underground storage wells in the storage field and piping that is down hole from the wellhead valves.[12] To the extent some of the NGLs received at the Bushton facility are transported through shared manifolds or other shared piping on the grounds of the facility to outgoing pipelines without undergoing fractionation processing or being stored underground, all of this piping and appurtenances are subject to the Part 195 regulations.[13]

In summary:

---

[10] Manufacturing means the making or assembling of goods by hand or machinery and it has not been argued that a NGLs facility is a manufacturing facility.

[11] This is not the first time PHMSA has informed hazardous liquid operators that such a NGLs facility is a terminal, not a refinery. See Letter from Ivan Huntoon, Director, Central Region to Mr. Manouch Daneshvar, Vice President, Marysville Hydrocarbons, LLC (May 7, 2008).

[12] By "unregulated" we mean unregulated by PHMSA for purposes of pipeline safety. Nothing in this interpretation letter is intended to express any views on whether the Bushton facility or any portion thereof is regulated by any other federal or state agency under its authority.

[13] In the discussion of the exemptions on pages 9-10 of your request, you correctly noted that the Production, Refining or Manufacturing Facility Exemption does not have the exclusivity requirement of the Terminals Exemption and that the former requires only that storage and in-plant piping be "associated with" a production, refining, or manufacturing facility. Because we are applying the Terminals Exemption here, the exclusivity requirement does come into play and shared manifolds and piping are not exempt.

The Pipeline and Hazardous Materials Safety Administration provides written explanations of the federal pipeline safety laws and regulations in the form of interpretation letters. These letters reflect the agency's current application of the laws and regulations to the specific facts presented by the person requesting the interpretation. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

- Piping on the grounds of the Bushton facility used exclusively to transfer hazardous liquids between non-pipeline modes of transportation or between a pipeline and a non-pipeline mode qualifies for the Terminal Facility Exemption in § 195.1(b)(9)(ii) and is exempt from the Part 195 regulations.

- The fractionation equipment in the fractionation plant and the piping and storage wells used exclusively for the fractionation process are not currently regulated by PHMSA.

- The underground storage wells in the storage field and piping that is down hole from the wellhead valves are not currently regulated by PHMSA.

- The remainder of the piping system on the grounds of the Bushton facility including pipe, valves, pumps, meters, dehydrators, and other components is subject to the Part 195 regulations and the storage field piping that is not down hole from the wellhead valves.[14]

I hope that this information is helpful to you. If I can be of further assistance, please contact me at 202-366-4400.

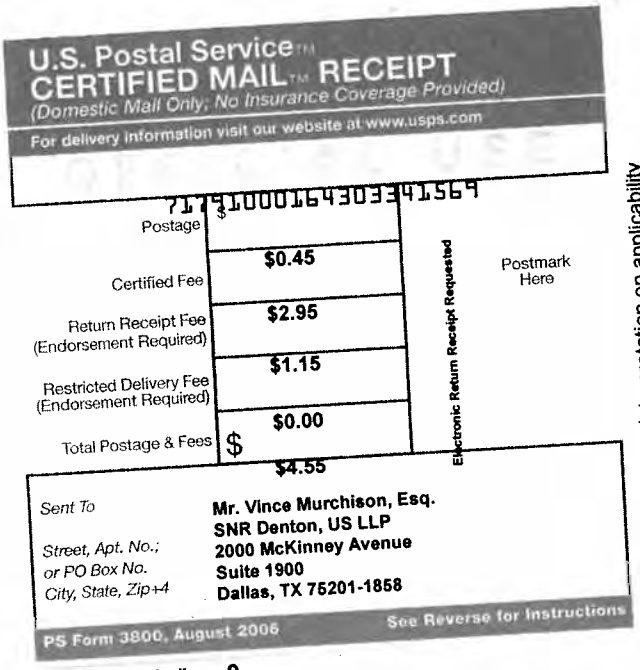
Sincerely,

Vanessa Allen Sutherland
Chief Counsel

cc: Mr. Wesley Christensen, Senior Vice President, NGL Operations, ONEOK
John Gale, Director, Office of Standards & Rulemaking
David Barrett, Director, Central Region

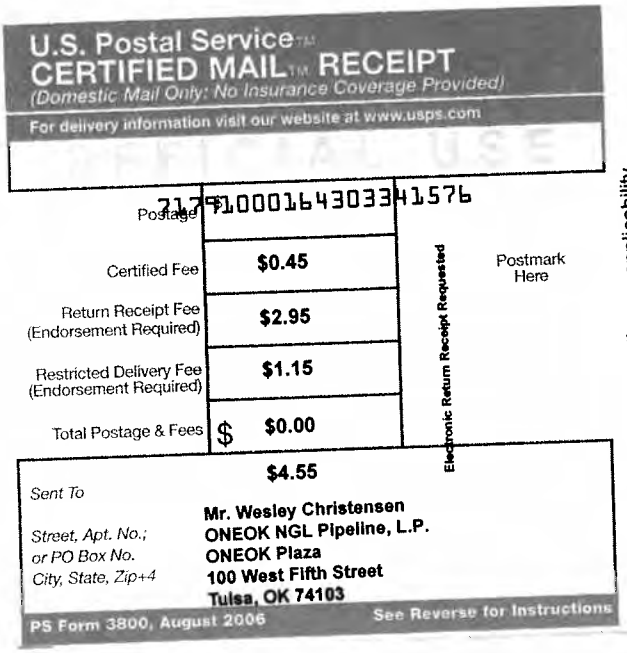
[14] Devices and associated piping necessary to control pressure in the pipeline (i.e., pressure sensors, emergency relief valves, and other equipment that is part of the pipeline control system) are not exempt even if they are located beyond the first block valve on the facility grounds. Therefore, if such devices and piping are present between the incoming meters and the valves at the wellheads, it will not change the determination made here.

The Pipeline and Hazardous Materials Safety Administration provides written explanations of the federal pipeline safety laws and regulations in the form of interpretation letters. These letters reflect the agency's current application of the laws and regulations to the specific facts presented by the person requesting the interpretation. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.



Code: Written Interpretation on applicability
Code2: federal pipeline safety laws & regs.

Batch #: 9
Article #: 71791000164303341569
Date/Time: 8/8/2012 2:12:53PM
Code: Written Interpretation on applicability
Code2: federal pipeline safety laws & regs.
File #::
Internal File #:
Internal Code:



Code: Written Interpretation on applicability
Code2: federal pipeline safety laws & regs.

Batch #: 9
Article #: 71791000164303341576
Date/Time: 8/8/2012 2:16:09PM
Code: Written Interpretation on applicability
Code2: federal pipeline safety laws & regs.
File #::
Internal File #:
Internal Code:

ONEOK PARTNERS

About Us

ONEOK PARTNERS, L.P. > ABOUT US

ONEOK Partners, L.P.
(NYSE: OKS) is one of the largest publicly traded master limited partnerships and is a leader in the gathering, processing, storage and transportation of natural gas in the U.S. and owns one of the nation's premier natural gas liquids (NGL) systems, connecting NGL supply in the Mid-Continent and Rocky Mountain regions with key market centers.

Our general partner, ONEOK Partners GP, L.L.C., is a subsidiary of ONEOK, Inc. (NYSE: OKE), a diversified energy company, which owns 43.4 percent of the partnership. ONEOK is one of the largest natural gas distributors in the United States, and its energy services operation focuses primarily on marketing natural gas and related services throughout the U.S.

ONEOK Partners operations are conducted through the following three business segments:

- Natural Gas Gathering and Processing
- Natural Gas Pipelines
- Natural Gas Liquids

The partnership was formerly Northern Border Partners, L.P. which was formed in 1993. On May 17, 2006, Northern Border Partners (NYSE: NBP) was renamed ONEOK Partners, L.P. Trading of ONEOK Partners common units on the New York Stock Exchange under the symbol OKS was effective May 22, 2006.

In April 2006, ONEOK completed the largest and perhaps the most significant series of transactions in its century-long history. As a key part of the multifaceted deal, ONEOK sold all of its natural gas gathering and processing; natural gas liquids gathering, fractionation, transportation and storage; and inter- and intra-state natural gas pipelines and storage businesses to ONEOK Partners.

For these assets, ONEOK Partners paid $1.35 billion in cash. It also issued to ONEOK approximately 36.5 million limited partner units, which are traded on the New York Stock Exchange under the symbol OKS. These units, coupled with a related general partner interest contribution, are valued at $1.65 billion.

View ONEOK Partners Fact Sheet.

ONEOK Partners' headquarters are located in:

ONEOK Plaza
100 West Fifth Street
Tulsa, OK 74103
Phone: 918-588-7000

Verified: Mr. Wesley Christensen's office address on 8/8/12 @ 2:08pm

© ONEOK, Inc. All rights reserved. | | | Connect with us:

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Chief Counsel

November 28, 2012

Mr. Wesley Christensen
Senior Vice President
ONEOK Partners, L.P.
100 West Fifth Street
Tulsa, OK 74103-4298

Re: Response to letter of November 13, 2012

Dear Mr. Christensen,

Thank you for your letter of November 13, 2012 concerning the jurisdictional status of your natural gas liquids (NGLs) pipeline facility in Bushton, Kansas. As you know, by letter dated August 8, 2012, PHMSA issued a letter of interpretation regarding the status of the Bushton facility (Interpretation). The Interpretation stated that:

- The NGLs that are stored at the Bushton facility arrive and depart via numerous interstate hazardous liquid pipelines which are subject to the jurisdiction of 49 U.S.C. § 60101 *et. seq.*

- Under 49 U.S.C. § 60101(a)(22), "transporting hazardous liquid" includes "the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline." The term "Pipeline facility" is defined in 49 C.F.R. § 195.2 as "new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide."

- As a pipeline storage facility that receives hazardous liquids being transported by jurisdictional pipeline and re-injects the hazardous liquids for continued transportation by pipeline (*i.e.*, a "mid-stream" facility), the Bushton facility is subject to the jurisdiction of 49 U.S.C. § 60101 *et. seq.*

With regard to the applicability of the federal pipeline safety regulations in 49 C.F.R. Part 195 to various parts of the Bushton facility, the Interpretation confirmed that:

- Piping on the grounds of the Bushton facility used exclusively to transfer hazardous liquids between non-pipeline modes of transportation or between a pipeline and a non-pipeline mode qualifies for the Terminal Facility Exemption in § 195.1(b)(9)(ii) and is exempt from the Part 195 regulations.

- The fractionation equipment, piping, and storage wells used exclusively for the fractionation process that comprise the fractionation plant are not currently regulated by PHMSA under Part 195 because PHMSA has not promulgated regulations that would apply to such piping and equipment.

- The underground storage wells in the storage field and piping that is down hole from the wellhead valves are not currently regulated by PHMSA under Part 195 because PHMSA has not promulgated regulations that would apply to such piping.

- The remainder of the piping system on the grounds of the Bushton facility including pipe, valves, pumps, meters, dehydrators, and other components is subject to the Part 195 regulations as is the storage field piping that is not down hole from the wellhead valves.

Following our meeting on September 7, 2012, subsequent discussions, and receipt of your letter dated November 13, 2012, I reviewed PHMSA's publications and past practices with respect to regulating mid-stream hazardous liquid pipeline storage facilities. Based on this review, I can confirm the following:

- PHMSA's regional offices treat mid-stream hazardous liquid pipeline storage facilities as pipeline facilities that are subject to the jurisdiction of 49 U.S.C. § 60101 *et. seq.* and the applicability of the Part 195 regulations to various parts of these facilities can depend on the particular configuration of such facilities.

- The presence of a fractionation plant or other kinds of separation or processing equipment located on the grounds of a mid-stream hazardous liquid pipeline facility does not mean that virtually the entire facility is exempt from regulation as a refinery under 49 C.F.R. § 195.1(b)(8). This would potentially create a gap in the regulation of pipeline systems that would be inconsistent with safety and therefore PHMSA has not adopted this position.[1]

- PHMSA has issued past written interpretations stating that piping "inside" a NGL processing plant is not regulated, but they are not inconsistent with the treatment of the Bushton facility in the Interpretation. Separation or processing plants located on the grounds of a production facility where NGLs are initially produced and a NGL pipeline originates are not subject to the jurisdiction of 49 U.S.C. § 60101 *et. seq.* until transportation has commenced. In this case, however, we are dealing with a mid-stream facility which receives products that are already in the stream of transportation.

PHMSA is committed to accomplishing its mission of ensuring pipeline safety in a manner that does not result in duplicative or overlapping regulation that would burden a pipeline company unnecessarily. In the Interpretation, I confirmed that the fractionation equipment, piping, and storage wells used exclusively for the fractionation process that comprise the fractionation plant are not currently regulated by PHMSA, nor are the underground storage wells and piping that is down hole from the wellhead valves. PHMSA's

---

[1] PHMSA issued a letter to ONEOK on February 28, 2012 which cited the wrong exemption and was therefore erroneous as to grounds, but even this letter did not state that the entire Bushton facility was exempt and reached the correct outcome with regard to which parts of the facility were regulated/unregulated.

Central Region office can provide you with additional clarity as to the precise demarcation points between the fractionation plant and the rest of the Bushton facility but may need additional information from you in order to do so.

In your letter of November 13, 2012, you also requested that the safety inspection scheduled to be conducted by PHMSA beginning on December 10, 2012 be postponed. Decisions concerning the scheduling of inspections are made by the Regional Director. Therefore, you should direct this request to David Barrett's office in Kansas City.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at 202-366-4400.

Best regards,

Vanessa Allen Sutherland
Chief Counsel

cc: Alan Mayberry, Deputy Associate Administrator, PHMSA
David Barrett, Director, Central Region, PHMSA