



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety Administration**

August 05, 2021

Mr. W. R. Byrd
RCP Inc.
801 Louisiana Street
Suite 200
Houston, TX 77002

Dear Mr. Byrd:

In an April 13, 2021, letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), you requested an interpretation of 49 CFR Part 195. Specifically, you requested an interpretation of § 195.454, which was adopted in the final rule titled, “Pipeline Safety: Safety of Hazardous Liquid Pipelines,” which became effective on October 1, 2019 (84 FR 52260).

You stated it is your understanding that the October 1, 2019, final rule was intended to address pipelines in a navigation channel more than 150 feet deep. You stated that while the legislation and the rule may have been written with deep water bodies in mind, both are written in a way that might apply to other pipelines that are directionally drilled deep below a shallow water body. Therefore, you asked PHMSA to clarify whether “the rule only applies to crossings of waterbodies that are themselves more than 150 feet deep – not to deep directional drills under shallow water bodies.”

The requirements of § 195.454 apply to “any underwater hazardous liquid pipeline facility located in a high consequence area that is not an offshore pipeline facility and any portion of which is located at depths greater than 150 feet under the surface of the water.” This provision was adopted in response to the self-executing provisions of section 25 of the 2016 PIPES Act, which requires operators of such pipelines to complete in-line inspection assessments appropriate to the integrity threats specific to those pipelines, no less frequently than once every 12 months. Section 25 of the 2016 PIPES Act also requires that operators use pipeline route surveys, depth of cover surveys, pressure tests, external corrosion direct assessment, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility, as necessary to assess the integrity of those pipelines on a schedule based on the risk that the pipeline facility poses to the high consequence area in which the facility is located.

As explained at the time § 195.454 was adopted, “PHMSA determined that one pipeline, Enbridge Line 5 at Mackinaw [City], Michigan, meets the applicability requirements for this provision. This line consists of two 20-inch pipelines where it crosses the Straits of Mackinac,

over a distance of approximately 5 miles.”¹ PHMSA did not interpret § 195.454 or Section 25 of the 2016 PIPES Act to apply to pipelines directionally drilled deep below the surface of a shallow water body. If a pipeline is installed and operated underwater at a depth greater than 150 feet under the surface of a body of water, similar to Enbridge Line 5, the operator of that pipeline would be subject to this regulation.

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

Sincerely,

John A. Gale
Director, Office of Standards
and Rulemaking

¹ See the Regulatory Impact Analysis at page 4-2, posted on regulation.gov under docket No. PHMSA–2010–0229. 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.



April 13, 2021

John Gale
Director of Standards and Rulemaking
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Request for Interpretation: 49 CFR 195.454

Dear Mr. Gale,

RCP Inc. is requesting an interpretation concerning the applicability of 49 CFR § 195.454 to various water crossing situations. 49 CFR §195.454 states:

§ 195.454 Integrity assessments for certain underwater hazardous liquid pipeline facilities located in high consequence areas.

Notwithstanding any pipeline integrity management program or integrity assessment schedule otherwise required under § 195.452, each operator of any underwater hazardous liquid pipeline facility located in a high consequence area that is not an offshore pipeline facility and any portion of which is located at depths greater than 150 feet under the surface of the water must ensure that:

- (a) Pipeline integrity assessments using internal inspection technology appropriate for the integrity threats to the pipeline are completed not less often than once every 12 months, and;**
- (b) Pipeline integrity assessments using pipeline route surveys, depth of cover surveys, pressure tests, external corrosion direct assessment, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility, are completed on a schedule based on the risk that the pipeline facility poses to the high consequence area in which the pipeline facility is located.**

Discussion

The rule cited above was issued by PHMSA on October 1, 2019, in response to legislation from congress. It is my understanding, and the understanding of others in industry and PHMSA that I have talked to, that the legislation, and this rule, was intended to address pipelines in a navigation channel more than 150' deep. While the legislation and the rule may have been written with deep waterbodies in mind, both are written in a way that might apply to other pipelines that are directionally drilled deep below a shallow water body.



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The legislation and rule might be read to apply to a pipeline that is more than 150 feet below the surface of the water, even though the waterbody itself is not 150' deep. This can occur when pipelines are directionally drilled below rivers and other waterbodies that may be relatively shallow.

It would be not be in the interest of pipeline safety if the depth of the pipeline (due to HDD) makes it covered under this rule, while other, shallower pipelines (perhaps installed by ditching, and which arguably are more exposed to the threat of external damage) crossing the same waterbody are not covered. This could lead future pipeline developers to avoid deep directional drills under shallow water bodies... even though deep directional drilling is often the safety method to install and maintain these crossings. To avoid this perverse outcome, the depth of the waterbody should be the relevant jurisdictional factor, not the depth of the pipeline.

Interpretation request

I request PHMSA's clarification that the rule only applies to crossings of waterbodies that are themselves more than 150 feet deep – not to deep directional drills under shallow water bodies.

Best regards,

A handwritten signature in black ink that reads 'Bill'.

W. R. (Bill) Byrd, PE
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Houston, TX 77002
wrb@rcp.com

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xc: Mr. Alan K. Mayberry