

MEMORANDUM

December 18, 1972

SUBJ: Jurisdiction in the Liquid Pipeline Area
FROM: Mark Aron
TO: Director, Office of Pipeline Safety

You have asked us to outline your jurisdiction generally in liquid pipeline area. You have not supplied any particular facts or questions, and individual cases will have to receive separate attention.

The pipeline regulations are issued under the authority of 18 U.S.C. 834, which provides that regulations issued by the Department under this section are "binding upon all carriers engaged in interstate or foreign commerce which transport explosives and other dangerous articles by land, and upon all shippers making shipments of explosives and other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water." (emphasis added).

Therefore, the OPS regulations would apply if the pipeline ran from one State to another State or if the pipeline was part of a system which carried oil intended for out-of-State consumption.

If the pipeline is wholly within one State or if it is very difficult to tell the origin or intended destination of the oil, it is still possible to determine that OPS has jurisdiction. The important consideration is that 18 U.S.C. 834 would apply to an intrastate pipeline if the carrier was engaged in interstate operations. Thus, if you are dealing with an Esso pipeline which is wholly within one State, the regulations would probably apply because Esso engages in interstate commerce and has other interstate pipelines. Most of your analysis should be focused on the nature of the carrier because most pipeline companies are very large and unquestionably interstate.

This interpretation of the OPS jurisdiction is based upon the particular phrasing of 18 U.S.C. 834 in which the phrase "in interstate or foreign commerce" limits "carrier" and not "dangerous articles."

Also, this interpretation is based upon several opinions dated August 1, 1967, and March 11, 1971, that

have been given by the Office of the General Counsel with respect to hazardous materials. (See attached). Hazardous materials and liquid pipeline regulations both are based upon 18 U.S.C. 834. The attached opinions also indicate that there is some basis in the congressional history of this section and in the opinions of the I.C.C. for saying that intrastate shipments would be covered as long as the carrier is engaged in interstate commerce.

In summary, to determine if OPS has jurisdiction of a pipeline, you should determine if the particular pipeline crosses a State border or carries oil with an intended destination in another State. If your determination is negative, you can then go on to determine whether the carrier has other interstate activities.

These are general guidelines, and individual cases will have to be analyzed in light of their particular facts.

Mark Aron, TGC-20

Attachments