

Mr. Bruce M. Smiley
Law Offices
Freeman, Freeman & Smiley
A Professional Corporation
Century Park Center, Suite 950
9911 West Pico Boulevard
Los Angeles, California 90035

Dear Mr. Smiley:

This letter is written in response to your letter of July 19, 1979, and also telephone conversation of July 17 and 18, 1979 requesting our confirmation of an oral interpretation of 49 CFR 195.200. We regret the long delay in responding.

The enclosed pipeline safety regulatory interpretation provides the information you requested.

Sincerely,

/signed/

Cesar De Leon
Associate Director for
Pipeline Safety Regulation
Materials Transportation Bureau

Enclosure

No. 80-5
Date: Mar 12, 1980

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
MATERIALS TRANSPORTATION BUREAU

PIPELINE SAFETY REGULATORY INTERPRETATION

Note: A pipeline safety regulatory interpretation applies a particular rule to a particular set of facts and circumstances, and, as such, may be relied upon only by those persons to whom the interpretation is specifically addressed.

SECTION: Section 192.327, 195.248, and 195.200

Subject: Development near pipelines

FACTS: A person wishes to purchase property in Broken Arrow, Oklahoma. Once purchased, this person intends to construct improvements on the property which will fall within the "Class 3 location" definition of 49 CFR 192.5(d).

This property is encumbered by two independent easements in favor of Continental Pipe Line Company and Oklahoma Natural Gas Company, respectively. Each easement contains pipelines which may be carrying either gases or liquids.

All pipelines are assumed in compliance with the Department's pipeline safety regulations applicable to undeveloped property.

Question: Does Subpart D of Part 195 apply to a situation involving only grading and improving the property, adding additional ground cover, and erecting building improvements? Specifically, do these activities fall within the meaning of "otherwise changing existing pipeline systems" under §195.200?

Interpretation: As stated in §195.200, Subpart D applies to construction of new steel pipeline systems and to relocating, replacing, or otherwise changing existing steel pipeline systems.

None of the activities mentioned would provide a reason to apply the construction requirements of Subpart D according to the provisions of §195.200. Each of the stated criteria for applying Subpart D involves either new construction or some physical alteration to an existing pipeline, and the activities planned would not physically alter the existing pipelines. Although the planned grading could physically alter the condition of the pipelines' right-of-way, this would not have the effect of "otherwise changing" the pipelines since the terms "pipeline" and "pipeline system" are defined in terms of "physical facilities," a term which does not include rights-of-way or land used by a pipeline.

Question: Do the cover requirements of §192.327 and §195.248 apply to the pipelines?

Interpretation: In accordance with §192.13 for gas pipelines and §195.200 for liquid pipelines, the cover requirements apply to pipelines at the time of construction or when a pipeline is subsequently replaced, relocated, or otherwise changed.

Cesar De Leon
Associate Director for
Pipeline Safety Regulation
Materials Transportation Bureau

Mr. Cesar DeLeon
Department of Transportation
Office of Pipeline Safety
2100 Second Street, S.W.
Washington, D.C. 20590

Re: Handy Dan Home Improvement Centers, Inc.
Department of Transportation regulations prescribed under Part 195-
Transportation of Liquids by Pipeline, Title 49-Transportation, Code of Federal
Regulations

Dear Mr. DeLeon:

Pursuant to the telephone conversations with our office of July 17, and July 18, 1979, I am writing this letter to request a written confirmation of the interpretive decision you rendered to us.

As we discussed, the facts are as follows:

A. Our client is presently in an escrow to purchase property in Broken Arrow, Oklahoma. Once purchased, our client intends to construct improvements on the property which will fall within the "class 3 location" definitions of Title 49, Section 192.5(d).

B. The property is encumbered by two independent easements in favor of Continental Pipe Line Company and Oklahoma Natural Gas Company, respectively. Each easement contains pipelines which may be carrying either gases or liquids.

C. All pipelines, to the best of our knowledge, are presently in compliance with Department of Transportation Regulations applicable to undeveloped property.

Our concern arises in connection with our desire to develop the property, and the specific requirements that the pipeline companies may impose upon us in their desire to fully comply with the pipeline regulations. In that regard, this letter is a request for an interpretation as to the applicability of Subpart D-Construction, Part 195-Transportation of Liquids by Pipeline, Title 49-Transportation, Code of Federal Regulations.

The pertinent language of Section 195.200 defining the Scope of Subpart D is as follows:

"This subpart prescribes minimum requirements for constructing new pipeline systems with steel pipe, and for relocating, replacing, or otherwise changing existing pipeline systems that are constructed with steel pipe. However, this subpart does not apply to the movement of pipe covered by Section 195.424."

As we interpret the regulations, Subpart D does not apply to this situation where we will only be grading and improving the property, adding additional ground cover, and erecting building improvements. It is clear that we are not "relocating or replacing" the pipeline, but I question the verbiage in Section 195.200 that states: "or otherwise changing existing pipeline systems." Specifically, what type of activity does the Department of Transportation consider to fall within the realm of "otherwise changing?"

Pursuant to the telephone conversations with our office, you informed us that it was your opinion that past interpretive decisions had stated that adding additional ground cover, changing landscaping, or erecting surface structures and related improvements were not considered activities which "change the existing pipeline system."

Your statement to us was that : "there is no reverse application of Title 49, Section 195.200 et. seq." We concurred that Subpart D is not applicable to our fact situation, and that the only applicable regulations pertaining to cover requirements would be Section 192.327, and 195.248. The purpose of this letter is to request your written confirmation of this interpretation. You informed us that it usually takes three weeks for your office to render an interpretative decision, but that we could speed up the process by being as specific in our question as is possible. I believe we have done so. Accordingly, I hope that you can now confirm the opinion that you gave to us over the telephone.

Your anticipated response is greatly appreciated. If you should have an questions, please do not hesitate to call.

Very truly yours,

FREEMAN, FREEMAN & SMILEY
A Professional Corporation

Bruce M. Smiley