

Primary Function Test Support Document (No Gaps/No Overlap)

By The API Pipeline Committee on Environment, Health and Safety (CEHS)

October 2008

Statement of Purpose

This brief supplement to the API White Paper entitled "Rationale Supporting PHMSA's Sole Jurisdiction Over Facilities Primarily Performing Pipeline Transportation-Related Activities" (the "White Paper"), is to encourage PHMSA and EPA to develop a "Primary Function Test" that effectuates the spirit and intent of the 1971 Memorandum of Understanding (MOU). API believes that the White Paper adequately set forth the framework for PHMSA and EPA to develop a Primary Function Test (PFT) approach to jurisdiction over pipeline facilities, including pump stations and breakout tank farms. However, in order to facilitate the agencies' development of a PFT, and to accommodate the agencies' request during an October 7th, 2008 meeting with API, the following presents some "operational case scenarios" that should be taken into account by the agencies, so that a PFT can be developed that honors the intent of the 1971 MOU, as well as implements the stated goal of "no gaps/no overlap" as mentioned in the October 15, 2007 proposed SPCC rulemaking. API encourages both PHMSA and EPA to publish its draft PFT concurrently with the final SPCC rule (i.e., in a Federal Register announcement, or other format of wide circulation), so that the regulated community can provide meaningful dialogue and commentary in the development of a final PFT.

API acknowledges that there will always be "exceptional operational situations" that do not necessarily lend themselves to formulaic resolution. However, API believes that in order for both the government and the regulated community to efficiently allocate and deploy their respective resources, a PFT that minimizes jurisdictional overlap and duplicative compliance efforts is critical, especially in cases where there has been significant confusion generated by the 2000 Felder/Luftig memorandum of agreement and the concept of "Complex Facilities." Moreover, the final PFT should be objective, so that the regulated community can readily identify the standards applicable to their operations. The following information is presented to raise awareness of operational scenarios that should be considered during the development of the PFT, so that the test can cover most, if not all operating scenarios encountered at pipeline facilities.

Operational Case Scenarios to be Considered when Developing a Primary Function Test

- Soil and groundwater remediation systems and associated equipment at breakout tank farms/pipeline facilities that contain oil
- Pipeline facility oil-filled operational equipment
- Breakout tank farm/pipeline facility and right of way maintenance and cleaning activities necessary for the continued operation of an interstate pipeline (e.g., draining pipelines or tanks into vacuum trucks or temporary portable totes, tanks and containers to inspect/repair/replace transportation-related pipeline components).
- Off-spec product storage/transfer to/from a pipeline, breakout tank or truck generated by "pipeline cuts," to ensure product integrity during interstate transportation
- Miscellaneous equipment and commodities that facilitate pipeline transport, such as drag reducing agent storage and injection activities, and equipment/apparatus that facilitate product quality assurance
- Heavy oil process heaters to keep oil from "setting up" in a pipeline
- Emergency generators necessary to maintain and ensure uninterrupted service at breakout tank farms/pipeline facilities

Karen Simon

From: Karen Simon
Sent: Thursday, October 23, 2008 10:24 AM
To: David Kunz (david.kunz@dot.gov); Scott Sherman (sherman.scott@epa.gov)
Cc: Peter Lidiak; Jennifer Wilbur (wilbur.jennifer@epa.gov); amelia.samaras@dot.gov
Subject: SPCC Joint Jurisdiction - Primary Function Test Support Document with Operational Case Scenarios
Attachments: PHMSA-EPA SPCC Joint Jurisdiction-PrimaryFunctionTest Support Doc 10-23-08.pdf
Importance: High

David and Scott,

Per your request at our October 7, 2008 meeting, attached are some operational case scenarios to be considered in developing a Primary Function Test (PFT) to determine regulatory authority under PHMSA and EPA spill prevention regulations at pipeline facilities. These scenarios are in addition to the information that was presented in the API White Paper ("Rationale Supporting PHMSA's Sole Jurisdiction Over Facilities Primarily Performing Pipeline Transportation-Related Activities"), and both documents should be considered when developing the PFT.

Please let me know if you have any questions, or would like to discuss this further. Thank you both for your efforts to resolve the SPCC joint jurisdictional issues for pipeline operators.

Karen

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