Multi-Agency Jurisdictional Determination

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Purpose

1. Demonstrate the importance of performing a multi-agency jurisdictional determination (PHMSA, RRC, USCG, etc.)
2. Ensure a complete understanding of each regulatory agency's jurisdictional start and stop points in facilities, on pipelines, and in tank batteries.

This presentation does not cover gathering lines.

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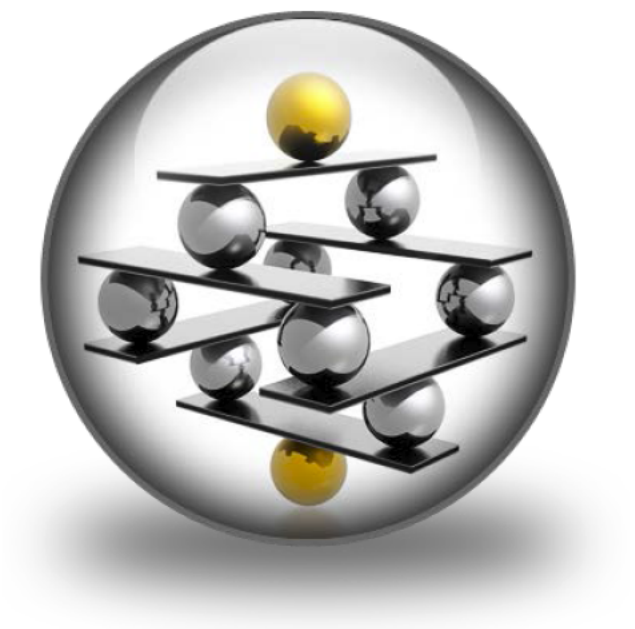
Pipeline Ownership

Pipeline ownership

Is Not

a Relevant Jurisdictional Consideration



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Decision Making Documentation

- Cite code
- Use interpretations
- Document **everything**

Why Conduct & Document a Jurisdictional Determination

- Establishes pipeline & facilities regulatory jurisdiction (PHMSA, USCG, OSHA, EPA, FERC).
- ID regulated pipeline jurisdiction start/stop points.
- Understand key nuances regarding ownership of facilities, NPMS, HCA's, navigable waterways, etc., and documentation of operator decisions regarding jurisdiction.
- Understand an operator's regulatory options in requesting regulatory jurisdiction of a single agency when assets are partially subject to PHMSA/RRC jurisdiction.
- Recognize the importance of developing programs, procedures, training and qualifications of personnel to the higher regulatory compliance standard where multiple regulatory compliance standards may apply.

Jurisdictional Determination
(RRC vs PHMSA)

- RRC has (as required) incorporated all PHMSA regulations by reference.
- The RRC may impose requirements that go **beyond** PHMSA requirements but may NOT condone anything that is not at least as stringent as the PHMSA requirements.
- RRC may deny a “Special Permit” request by its own authority. (§190.341)
- If the RRC wants to grant a “Special Permit”, it must be approved by PHMSA before it is valid.
- The RRC, absent a violation of state law, may not deny a “Special Permit” approved by PHMSA.

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Regulatory Standards

- When multiple agencies are involved, the more stringent regulation will be applied.
- Recognize the importance of developing programs, procedures, training and qualifications of personnel to the higher regulatory compliance standard where multiple regulatory compliance standards may apply.
- Personal performing covered tasks must be qualified to more stringent regulation(s).
- Ensure all decisions are documented.
- Applicability of Operator's Higher Standard(s) [Regulated/Ops Excellence]

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Overlapping Requirements

Examples

- OSHA PSM vs. PHMSA
- UNGS qualifications vs. pipeline OQs
- 194 – Response Plan vs. 195 – Emergency Response Plan
- EPA / TCEQ vs. PIPES Act of 2020 Section 114

Agency Oversight Options

Understand the regulatory options an operator has in requesting regulatory jurisdiction of a single agency when assets are partially subject to PHMSA jurisdiction and partially subject to RRC jurisdiction.

Jurisdictional Waiver Requests

- When operators are subject to the jurisdiction of multiple agencies, they may request that all assets be covered under a single jurisdiction
- PHMSA will consult with the interstate agent when an interstate operator requests a waiver
- A State agency may consider a waiver of pipeline safety requirements subject to PHMSA concurrence

Jurisdictional Waiver Requests

Pipelines on the Outer Continental Shelf (OCS) that are producer-operated and cross into State waters without first connecting to a transporting operator's facility on the OCS, upstream (generally seaward) of the last valve on the last production facility on the OCS.

Safety equipment protecting PHMSA-regulated pipeline segments is not excluded.

Producing operators for those pipeline segments upstream of the last valve of the last production facility on the OCS may petition the Administrator, or designee, for approval to operate under PHMSA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

Does OSHA's PSM Standard, 29 CFR §1910.119 apply to LNG export facilities?

- No. OSHA's PSM Standard, 29 CFR § 1910.119 does not apply to LNG facilities, including export facilities subject to 49 CFR Part 193.
- OSHA PSM may apply if exempted from PHMSA coverage. Example: 49 CFR §193.2001(b)(2) exempts PHSMA from coverage of "LNG facilities used in the course of natural gas treatment or hydrocarbon extraction which do not store LNG."
- Therefore, PSM may apply to LNG pretreatment plants located offsite or beyond the property boundary of a LNG export terminal which involve natural gas treatment, or hydrocarbon extraction facilities that do not store LNG.

US Coast Guard

Applies to new or modified LNG or LHG facilities on a waterway

LHG = Liquefied Hazardous Gas

- Initial requirements for approval
- Requirements beyond 195 and RRC
- Waterway Suitability Assessment
- Deep water ports

US Coast Guard

- Location, Location, Location (jurisdiction ends at last valve in secondary containment).
- For Office of Pipeline Safety (PHMSA) jurisdictional facilities, additional considerations for OSHA Process Safety Management (PSM) and state/local agencies.
- The Railroad Commission considers pipelines that cross a public road (e.g. regulated by TxDOT) or when the pipeline crosses property ownership as triggers for pipeline safety jurisdiction of the pipeline.

US Coast Guard

Marine Terminals

- The USCG's jurisdiction extends from the first isolation valve inside the secondary containment to the vessel. This includes the loading and unloading of oil in bulk from a vessel to an onshore facility, as well as the oil-carrying vessel and the connecting piping.

LNG Facilities

- The USCG regulates LNG facilities that affect the safety and security of port areas and navigable waterways. This includes matters related to navigation safety, vessel engineering and safety standards, and the safety of facilities or equipment located near navigable waters.

Other Facilities and Vessels

- The USCG regulates facilities and vessels located on or adjacent to waterways under U.S. jurisdiction. This authority comes from the Maritime Transportation Security Act of 2002 (MTSA).

Navigable Waterways

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. [USACOE, other agency definitions may differ such as NPMS navigable waterway list].

A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

Navigable Waterways – Texas RRC

Navigable streams are waters having a width of 30’ from the mouth up, regardless of dry seasons.

Includes the entire bed, not just the area covered by flowing water.

Marine Transportation

- Transfer lines between vessels and marine transportation-related facilities are subject to safety requirements of the U.S. Coast Guard (33 CFR Parts 154 and 156).
- Dock loading arm or manifold up to the first valve after the line enters the SPCC containment or secondary containment if the facilities are not protected by the SPCC plans.

Terminals

- Terminals = breakout tanks, terminal storage tanks, related piping and truck loading racks connected to terminal tanks by separate piping.
- If a tank is used or could be used as a breakout tank at any time = It remains a breakout tank regardless of use as a distribution tank.
- Most tanks are both breakout tanks and distribution tanks.

Terminal Jurisdiction

"Pipeline transportation is complete when the hazardous liquid is delivered to a terminal storage tank, or to a breakout tank to the extent subsequent transportation is by another mode.

The piping within the terminal used exclusively to transfer product from a storage or breakout tank to a truck loading rack and the truck loading rack itself are not part of pipeline facilities subject to regulation under 49 U.S.C. Chap. 601. In such a situation, pipeline safety jurisdiction stops at the outlet of the tank."

Sioux Falls Fire Department. July 24, 1995 [PI-95-028]

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Agency Agreements

- Where multiple state and federal agencies have potentially over-lapping jurisdiction, a Memorandum of Understanding or an Interagency Agreement may be utilized.

- Each agency's role and responsibilities are established. Ensures coordination.

- For example, the 2004 PHMSA Interagency Agreement on Liquified Natural Gas includes:
  - FERC – Lead for the National Environmental Policy Act (NEPA) review
  - DOT – Promulgate and enforce safety regulations
  - USCG – Safety and security of port areas
  - OSHA – Worker safety

- Other MOU's

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PHMSA LNG Rule Applicability [49 CFR 193]

49 CFR § 193.2001(b) states that 49 CFR § 193 **DOES NOT** apply to:

(1) LNG facilities used by the ultimate consumers of LNG or natural gas.

(2) LNG facilities used in the course of natural gas treatment or hydrocarbon extraction which do not store LNG.

(3) In the case of a marine cargo transfer system and associated facilities, any matter other than siting pertaining to the system or facilities between the marine vessel and the last manifold (or, in the absence of a manifold, the last valve) located immediately before a storage tank.

(4) Any LNG facility located in navigable waters (as defined in Section 3(8) of the Federal Power Act (16 U.S.C. 796(8)).

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

- Distribution
- Gas Gathering
- Transmission
- Underground Gas Storage (Reservoir/Aquifer, Salt)

Gas Definitions

- *Transportation of gas* means the gathering, transmission, or distribution of gas by pipeline or the storage of gas, in or affecting interstate or foreign commerce.
- *Underground natural gas storage facility* (*UNGSF)* means a gas pipeline facility that stores natural gas underground incidental to the transportation of natural gas, including:
  - A depleted hydrocarbon reservoir;
  - An aquifer reservoir; or
  - A solution-mined salt cavern.

  In addition to the reservoir or cavern, a UNGSF includes injection, withdrawal, monitoring, and observation wells; wellbores and downhole components; wellheads and associated wellhead piping; wing-valve assemblies that isolate the wellhead from connected piping beyond the wing-valve assemblies; and any other equipment, facility, right-of-way, or building used in the underground storage of natural gas.

Natural and Other Gas Exemptions

(4) **Onshore gathering of gas**—

(i) Through a pipeline that operates at less than 0 psig (0 kPa);

(ii) Through a pipeline that is not a regulated onshore gathering line (as determined in § 192.8); and

(iii) Within inlets of the Gulf of Mexico, except for the requirements in § 192.612; or

(5) **Any pipeline system** that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).

Natural and Other Gas Exemptions

Regulated Gas

- Natural
- Flammable
- Toxic or Corrosive

Non-Regulated

(Examples)

- Inert
- CO2 (gas state, not currently regulated under Part 192)

Farm Taps

- Meet the definition of service lines
- Piping and appurtenances owned or maintained by an entity engaged in the transportation of gas, are distribution service lines [§191, 192 &192.740 (pressure regulating, limiting & overpressure protection – individual service lines directly connected to regulated gathering or transmission pipeline)]
- A service line ends at the connection to customer owned piping, or the outlet of the meter, whichever is further downstream
- Customer/Individually owned piping and appurtenances that are not engaged in the transportation of gas (e.g., farmer or residential customer) are not service lines and not subject to Part 191 or Part 192. Therefore, neither the customer nor the operator are required maintain a customer owned regulator on a customer fuel line in accordance with §192.740.

Gas Pipelines Inside a Building

- PHMSA does not regulate gas piping inside a building unless the interior piping is used by the gas pipeline operator to distribute gas.
- However, PI-16-0012 interprets the Mall of America's inside gas pipeline as regulated as the gas pipelines inside buildings may be regulated where the gas piping is being used by the gas pipeline operator to transport gas to several businesses who are the ultimate consumers of the gas.
- If there is transportation of gas inside of a building, above ground or underground, Part 192 applies up to the custody transfer point between the gas distributer (LDC or master meter system operator) and the consumer.

Landfill Gas

- Facilities located on the grounds of a landfill between the outlet for the extraction wells and the outlet for the compressor station are used for the onshore gathering of gas.
- Any vacuum lines and other facilities that operate at less than atmospheric pressure are exempt from Part 191 and Part 192.

FERC – Residue PL Jurisdiction (2019)

- FERC uses the “Primary Function Test” to determine jurisdiction of residue pipeline facilities located downstream of processing plants. [1983, 1994 & continues refinement].
- Residue pipelines > 5 miles are jurisdictional transmission lines.
- This bright line five-mile test for the jurisdictional status emerged in cases that applied the modified “primary function” test announced in 1994.
- The mechanical application of the 5-mile test has been criticized as arbitrary and capricious and is an unexplained shift away from a more flexible approach to the analysis of jurisdiction.

Residue Gas and Residue Gas Compression

- Residue Gas means production lease natural gas from which gas liquid products, and, in some cases, non-hydrocarbon components have been extracted such that it meets the specifications set by a pipeline transmission company, and/or a distribution company.

- Residue Gas Compression means the compressors operated by the processing facility, whether inside the processing facility boundary fence or outside the fence-line, that deliver the residue gas from the processing facility to a transmission pipeline.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

(a) ***Covered.*** Except for the pipelines listed in paragraph (b) of this Section, this Part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS). Covered pipelines include, but are not limited to:

(1) Any pipeline that transports a highly volatile liquid;

(2) Any pipeline segment that crosses a waterway currently used for commercial navigation;

(3) Except for a gathering line not covered by paragraph (a)(4) of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure;

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

(4) Any of the following onshore gathering lines used for transportation of petroleum:

(i) A pipeline located in a non-rural area;

(ii) A regulated rural gathering line as provided in § 195.11; or

(iii) A pipeline located in an inlet of the Gulf of Mexico as provided in § 195.413.

(5) For purposes of the reporting requirements in subpart B of this part, any gathering line not already covered under paragraphs (a)(1), (2), (3) or (4) of this section.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

Excepted. This Part does not apply to any of the following:

(1) Transportation of a hazardous liquid transported in a gaseous state;

(2) Except for the reporting requirements of subpart B of this part, see § 195.13, transportation of a hazardous liquid through a pipeline by gravity.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

Excepted. This Part does not apply to any of the following:

(3) Transportation of a hazardous liquid through any of the following low-stress pipelines:

(i) A pipeline subject to safety regulations of the U.S. Coast Guard; or

(ii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

(4) Except for the reporting requirements of subpart B of this part, see § 195.15, transportation of petroleum through an onshore rural gathering line that does not meet the definition of a "regulated rural gathering line" as provided in § 195.11. This exception does not apply to gathering lines in the inlets of the Gulf of Mexico subject to § 195.413.

(5) Transportation of hazardous liquid or carbon dioxide in an offshore pipeline in state waters where the pipeline is located upstream from the outlet flange of the following farthest downstream facility: The facility where hydrocarbons or carbon dioxide are produced or the facility where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed;

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

(6) Transportation of hazardous liquid or carbon dioxide in a pipeline on the OCS where the pipeline is located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(7) A pipeline segment upstream (generally seaward) of the last valve on the last production facility on the OCS where a pipeline on the OCS is producer-operated and crosses into state waters without first connecting to a transporting operator's facility on the OCS. Safety equipment protecting PHMSA-regulated pipeline segments is not excluded. A producing operator of a segment falling within this exception may petition the Administrator, under § 190.9 of this chapter, for approval to operate under PHMSA regulations governing pipeline design, construction, operation, and maintenance;

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

(8) Transportation 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;

(9) Transportation of hazardous liquid or carbon dioxide:

(i) By vessel, aircraft, tank truck, tank car, or other non-pipeline mode of transportation; or

(ii) 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. These facilities do not include any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b); or

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

(10) Transportation of carbon dioxide downstream from the applicable following point:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or

(ii) The connection of the first branch pipeline in the production field where the pipeline transports carbon dioxide to an injection well or to a header or manifold from which a pipeline branches to an injection well.

PART 195—Breakout Tanks

(c) ***Breakout tanks.*** Breakout tanks that are subject to this part must comply with requirements that apply specifically to breakout tanks and, to the extent applicable, with requirements that apply to pipeline systems and pipeline facilities. If a conflict exists between a requirement that applies specifically to breakout tanks and a requirement that applies to pipeline systems or pipeline facilities, the requirement that applies specifically to breakout tanks prevails. Anhydrous ammonia breakout tanks need not comply with §§ 195.132(b); 195.205(b); 195.264(b) and (e); 195.307; 195.428(c) through (d); and 195.432(b) and (c).

In-Plant Piping

(§195.2 Definitions)

In-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).

Pipeline or pipeline system means 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.

Pipeline facility means new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.

Hazardous Liquids Pipeline Definitions

(§195.2 Definitions)

Low-stress pipeline means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

Operator means a person who owns or operates pipeline facilities.

An operator may make arrangements with another person for the performance of any action required by this part. However, the operator is not thereby relieved from the responsibility for compliance with any requirement of this part. (§195.10)

PHMSA Part 195 Hazardous Liquids

Regulated

- Hazardous liquid
- Biofuels (e.g., ethanol)
- Anhydrous ammonia
- Highly Volatile Liquids (HVLs)
- Carbon dioxide (CO_2)
- Ethylene, propylene, butadiene, benzene, toluene, xylene, etc.
- Non-petroleum fuel

Non-Regulated

- Liquid chlorine
- Liquid sodium hydroxide
- Sulfuric acid
- Inorganic chemicals (i.e., NOT carbon based)

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Pipeline Jurisdiction - Key Considerations

1. Is the transported commodity PHMSA/RRC regulated (§ 191/192).
2. Do exemptions apply?
3. Start/stop points (with OPP location considerations).
4. Location of the pressure source (i.e., pumps, compression, OPP).
5. Crossings (e.g., roads, water, railroads).
6. High Consequence Areas.
7. Facility boundaries (e.g., in-plant non-juris. piping start/end).
8. Non-pipeline transportation facilities.

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Hazardous Liquids Jurisdictional Determination

Consider the following:

- Ownership does not impact jurisdictional determination.
- Federal/State Agency Requirements.
- HL Jurisdiction: often begin at the suction side of a pump. [Gas: Compressor location].
- Location of Overpressure Protection and Valve/regulating/metering stations.
- Tank Farms (e.g., PHMSA regulated, Breakout Tanks, Facilities Tankage)
- PHMSA, when considering exemptions, will not recognize pipelines as separate systems just because they are labeled as different/independent pipelines. Remember – if one segment is regulated, all connected segments will most likely be regulated.

Hazardous Liquids Jurisdictional Determination

Consider the following:

- Back-up your decisions with technically sound analysis and decisions.
- Non-regulated PLs should be monitored for potential for becoming regulated.
- Document … Document … DOCUMENT… Communicate!!!… TVC

Examples

The following slides demonstrate potential examples of how system design can affect jurisdiction

Abandoned HL Pipelines

Physically disconnected pipeline

- No longer transports a hazardous liquid.
- Permanently removed from service .
- Cleaned & Purged and sealed [§ 195.402(c)(10)] (N_2 blanket).
- Does not cross over, under, through a commercially navigable waterway.
- May require other agencies approval.
  - COE, EPA, State, County

Abandoned per 195.402(c)(10) – Part 195 no longer applies.

- May not be returned to service unless the PL was maintained per Part 195 or meets the requirements of a newly designed and constructed pipeline.

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Breakout Tanks

- PHMSA regulated transportation into/out of tank.
- Relives Surge.
- Overpressure Protection.

"Potential For"

If you car seal a tank but the tank has the potential for relieving surge…..

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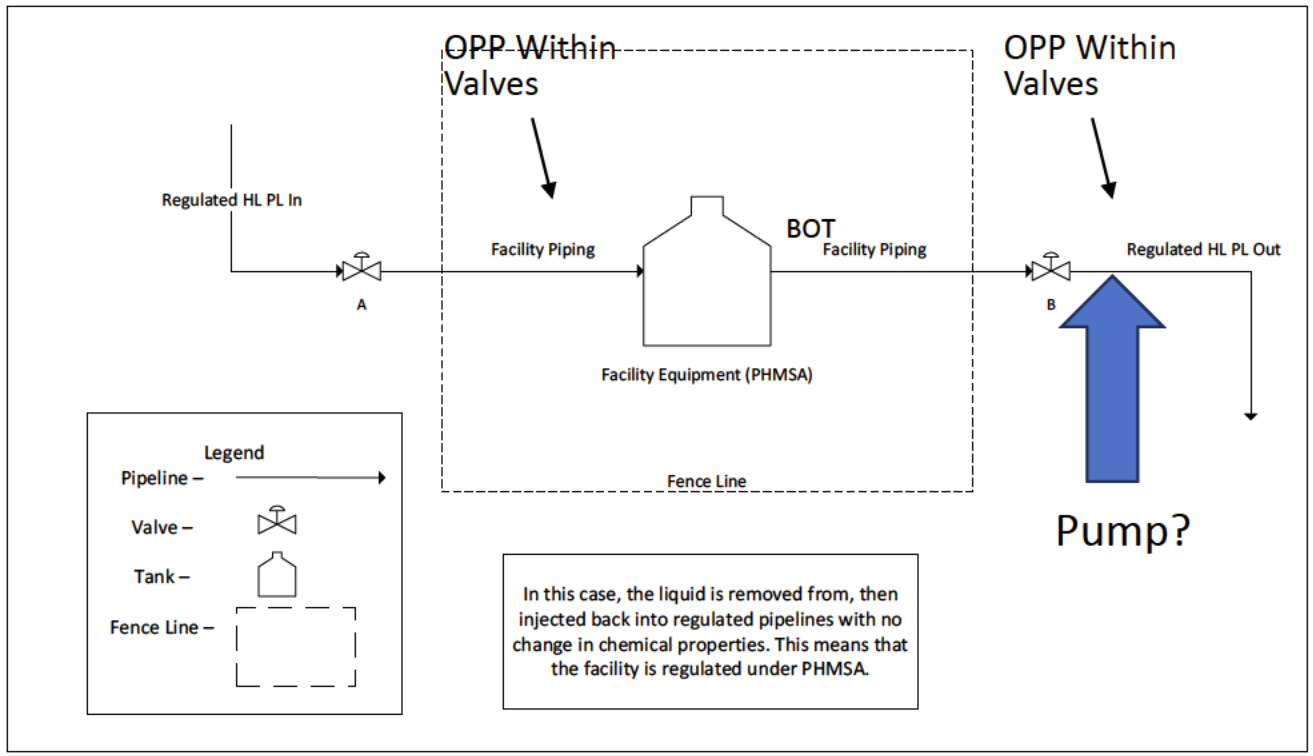
Jurisdictional Determination

(HL PL with Tankage)



- Is the Tank a Breakout Tank?
- Where does Overpressure Protection have to be?

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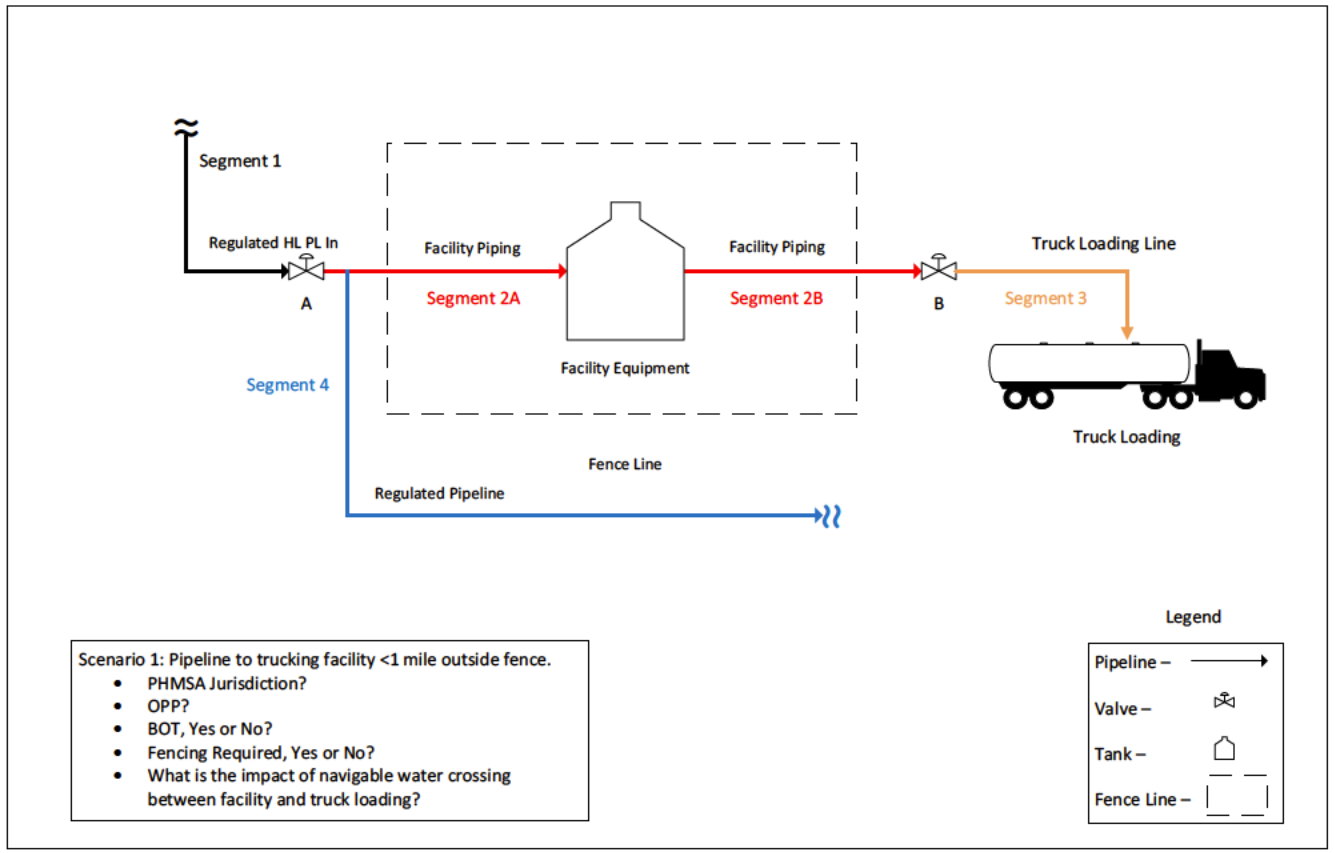
Jurisdictional Determination

(HL PL with Trucking)



- Is the Tank a Breakout Tank?
- Where does Overpressure Protection have to be?

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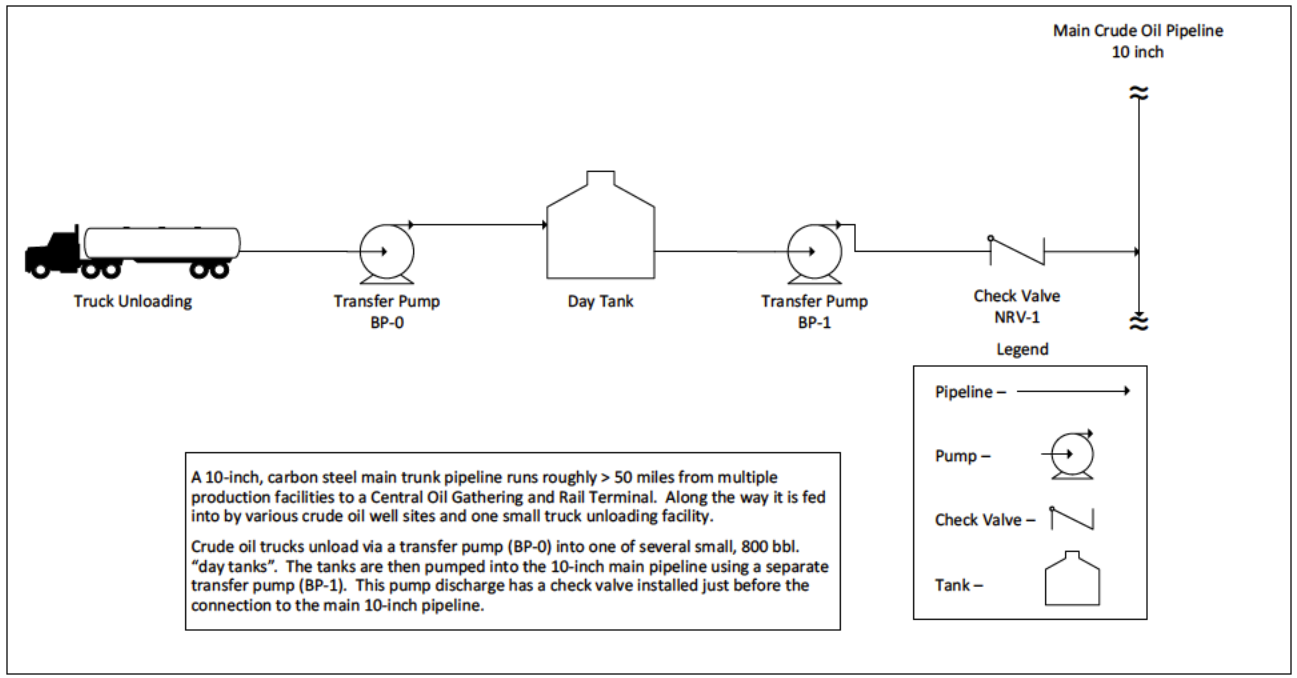
Jurisdictional Determination

(Truck Unloading to HL PL)



- Is the day tank a Breakout Tank?
- What information is needed to fully understand the PL configuration for jurisdictional determination?
- What is the starting point of the HL pipeline?

Final Reminder

Once you have completed your Jurisdictional Determination:

1. National Pipeline Registry (New Operator, New Facilities…).
2. National Pipeline Mapping System Update.
3. Annual Report (Include new systems and or new lengths in next filing. Note, some instances may require an Annual Report update).
4. FERC regulated facilities are “Interstate Pipelines” NOT “Intrastate”. Update Annual Reporting….PHMSA inspects Interstate pipeline systems… may request state partner oversight.
5. One-Call mapping updates.

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Take Aways

- HL Jurisdiction will often begin at the suction side of a pump.
- Ownership does not impact a jurisdictional determination.
- Labeling pipelines as different/independent pipelines does not mean that PHMSA will see them as separate line systems when considering exemptions. Remember – if one segment is regulated, all connected segments may be regulated.
- You have a HL breakout tank if the tank is used or could be used to “Relieve Surges” and/or used for storage and then reinjected into a regulated pl system.

Take Aways

- Protect yourself by performing and documenting a sufficient analysis to determine if you have a PHMSA regulated Pipeline System.
- Cite the code wherever it is applicable.
- Cover every element of the exemption or determination.
- Keep it simple – Inspectors will not read “between the lines.

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Questions?

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