U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

JUN 12 2013

Mr. Mark Rauch, President
Pipeline & Terminal Management Corp
Key West Pipeline Company
Building D19
Trumbo Point Naval Station
Key West, FL 33040

Dear Mr. Rauch:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated September 28, 2012, Key West Pipeline Company (KWPC) requested an interpretation of the applicability of a provision of the Federal pipeline safety regulations at 49 CFR Part 195 to a hazardous liquid pipeline that you operate. Specifically, you ask whether filing requirements for offshore pipeline condition reports are applicable for your pipeline under § 195.57. This followed PHMSA's September 18, 2012, inspection of KWPC pipeline facilities and operations, at which time PHMSA's inspector requested documentation of KWPC's 2010 underwater inspection report as required by §195.57.

You stated that KWPC is the owner/operator of a 4-inch diameter jet fuel delivery pipeline located in Key West, that is subject to 49 CFR Part 195. A portion of the KWPC pipeline lies just off of the shoreline of the island of Key West, in waters of the Gulf of Mexico that are less than 15 feet deep, and the underwater portion of the KWPC pipeline extends several hundred yards seaward from the northern shoreline of Key West.

You stated that in 2005 KWPC conducted its first underwater inspection of the KWPC pipeline as required by § 195.413(a). That inspection identified the presence of an exposed segment of the underwater pipeline. After discovering the exposed underwater segment, KWPC reported it to PHMSA. KWPC subsequently applied for, and was issued, a Special Permit (PHMSA-2006-25026) waiving KWPC's compliance with the § 195.413(c)(2) requirement to place a marker over the exposed underwater pipeline segment. You stated that under the terms of the Special Permit, KWPC is obligated to perform annual inspections of the exposed underwater pipeline segment and to report any material change in the condition of the exposed underwater pipeline segment found during any annual or five-year inspection. You stated that in July 2010 you performed a five-year inspection of the underwater segment of the pipeline and found no material changes to the exposed segment. You acknowledged that you did not submit a § 195.57 report to PHMSA of the results of this inspection, but noted that copies of all five-year

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.

inspection reports (as well as the annual inspections of the exposed pipeline segment) are maintained at KWPC's offices in Key West, Florida.

In support of your argument that the underwater portions of the KWPC pipeline are not located offshore, you cited the U.S. Supreme Court decision in *U.S. v. States of La., Tex., Miss., Ala., and Fl.*, 363 U.S. 121 (1960), in which the Court upheld the State of Florida's claim that it owned a three-marine-league belt of land under the Gulf of Mexico, seaward from its coastline. You stated that the KWPC pipeline is located within this belt of land under the Gulf of Mexico. Based on the State of Florida's claim of title to such lands underlying the Gulf of Mexico, in 1964, the State of Florida granted KWPC a perpetual easement over these submerged lands of the State of Florida for the purpose of constructing, installing and maintaining the KWPC pipeline.

In responding to your request, we reviewed the applicable definitions and regulations. Section 195.2 defines "offshore" as:

> *Offshore* means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

Section 195.57 states:

> § 195.57 Filing offshore pipeline condition reports.
> (a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to § 195.413(a), report the following information ...

And, § 195.413(a) states:

> § 195.413 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.
> (a) Except for gathering lines of 4½ inches (114mm) nominal outside diameter or smaller, each operator shall prepare and follow a procedure to identify its pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water that are at risk of being an exposed underwater pipeline or a hazard to navigation. The procedures must be in effect August 10, 2005.

Thus, the § 195.57 reporting requirement expressly involves reporting of the results of the underwater inspections required by § 195.413. With regard to the Supreme Court decision, we believe there is no conflict with the definition of "offshore" in § 195.2. There is nothing in the definition of the term "offshore" in § 195.2 that states or implies "inland waters" are necessarily state waters. In fact, the term "inland waters" is not in the Supreme Court ruling. Moreover, the Supreme Court did not state that the three-mile limit also demarcated "inland waters" from offshore. It merely acknowledged that Florida and the other coastal states had property interests in the land under the three-mile area seaward from the shoreline. Therefore, the Supreme

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Court's decision has no relevance to the applicability of the Part 195 regulations to pipelines that transport hazardous liquids in the Gulf of Mexico.

In addition, the special permit was granted to KWPC only for the §§ 195.413(c)(2) and 195.413(c) (3) requirements. The § 195.57 requirements are intended to protect the public and the environment from the hazards associated with pipeline damage caused by vessels in the shallow waters of the Gulf of Mexico. Based on the information you provided, your pipeline meets the intent of the § 195.57 requirements as it is seaward of the Gulf of Mexico shoreline and subject to the underwater inspection requirements of § 195.413.

I hope that this information is helpful to you. If we can be of further assistance, please contact Tewabe Asebe of my staff at (202) 366-5523.

Sincerely,

John A. Gale
Director, Office of Standards
and Rulemaking

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PI-12-0010

KEY WEST PIPELINE COMPANY

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September 28, 2012

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
East Building, 2nd Floor
Mail Stop: E24-455
1200 New Jersey Ave., SE
Washington, DC 20590

Attn: John Gale, Director
Office of Regulations

Re: Key West Pipeline Company
OPID No. 26054
Request for Interpretation of 49 CFR §195.57 (Filing Offshore Pipeline Condition Reports)

Dear Mr. Gale:

Key West Pipeline Company (KWPC) is the owner/operator of a 4-inch jet fuel delivery pipeline located in Key West, Florida (KWPC pipeline), that is regulated by the Petroleum and Hazardous Materials Safety Administration (PHMSA) and is subject to 49 CFR Part 195. A portion of the KWPC pipeline lies just off of the shoreline of the island of Key West, in waters of the Gulf of Mexico that are less than 15 feet deep. At no point is the underwater portion of the KWPC pipeline greater than several hundred yards from the northern shoreline of Key West.

KWPC seeks assistance from your office at this time in determining the potential applicability of 49 CFR §195.57 to the KWPC pipeline. Section 195.57, which is titled "Filing Offshore Pipeline Condition Reports," requires operators to file with PHMSA copies of reports of certain inspections that such operators are otherwise required to perform on pipelines located in the Gulf of Mexico in waters less than 15 feet deep, pursuant to 49 CFR §195.413(a). Given the actual title of §195.57, KWPC believes that only *offshore* pipelines are subject to the reporting requirement set forth therein. The term "offshore" is defined by §195.2 as "beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters."

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The underwater portions of the KWPC pipeline are not located within waters that would be deemed *offshore* as that term is defined in §195.2. In *United States v. Florida*, 363, U.S. 121 (1960), the United States Supreme Court upheld the State of Florida's claim that it owned a three-marine-league belt of land under the Gulf of Mexico, seaward from its coastline. The KWPC pipeline is clearly located within this belt of land under the Gulf of Mexico. Consistent with the State of Florida's claim of title to such lands underlying the Gulf of Mexico, in 1964, the State of Florida granted KWPC a perpetual easement over sovereign submerged lands of the State of Florida for the purpose of constructing, installing and maintaining the KWPC pipeline. The KWPC pipeline, therefore, is clearly not an "offshore" pipeline, as that term is defined in §195.2.

The dispute at issue for KWPC is the confusion that results from the apparent scope of §195.57 that follows from its title with the text of §195.57, which provides that operators shall file pipeline condition reports for underwater pipelines subject to §195.413(a). Section 195.413(a) is a rule that specifically applies to pipelines lying within the Gulf of Mexico and its inlets in waters less than 15 feet deep. Clearly it is possible to own and to operate a pipeline that lies in the Gulf of Mexico and its inlets in waters less than 15 feet deep without also meeting the definition of an offshore pipeline under §195.2. As such, it appears that the most reasonable means of resolving the potential conflict between the title and the text of §195.57 is to find that §195.57 applies only to pipelines that are located in the Gulf of Mexico in waters less than 15 feet *and* also meet the definition of an offshore pipeline.

KWPC is writing at this time to request clarification on PHMSA's interpretation of §195.57 and to receive a resolution on whether or not KWPC has any reporting obligations under the rule. Some history about the KWPC pipeline follows, in order to provide you with a greater understanding of the current regulatory compliance and reporting obligations that KWPC is already subject to under §195.413(a).

KWPC first became subject to the requirements of §195.413(a) in 2005, at which time KWPC conducted its first underwater inspection of the KWPC pipeline. That inspection disclosed the presence of an exposed segment of the underwater pipeline. Following the discovery of the exposed underwater segment and the reporting of the same to PHMSA, KWPC applied for, and was issued, a Special Permit waiving KWPC's compliance obligations under the provisions of Part 195 that require a hazardous liquid pipeline operator to place a marker over the center of an exposed underwater pipeline segment that is less than 200 yards long and to bury an exposed underwater pipeline segment so that the top of the pipe is 36 inches below the underwater natural bottom for normal excavation or 18 inches for rock excavation. The Special Permit was noticed in the Federal Register at 73 Fed. Reg. 8104 (February 12, 2008). Pursuant to the Special Permit, KWPC is obligated, among other things and in addition to the 5-year inspections mandated by §195.413(a), to perform annual inspections of the exposed underwater pipeline segment and to report "any material change in the condition of the exposed underwater pipeline segment found during any annual or 5-year inspection."

In July 2010, KWPC performed its second 5-year inspection of the entire underwater segment of the KWPC pipeline. No material change was noted in the exposed pipeline segment and no subsequent notification was provided to PHMSA of the results of the 5-year inspection. Copies of all 5-year inspection reports (as well as the annual inspections of the exposed pipeline segment) are maintained at KWPC's offices in Key West, Florida. KWPC has, at all times, acted in compliance with its Special Permit.

During a September 18, 2012 inspection of the KWPC pipeline, PHMSA Inspector Donald Murphy requested evidence that KWPC filed its 2010 underwater inspection report with PHMSA pursuant to §195.57. KWPC advised Mr. Murphy that it had not filed the 2010 underwater inspection report with PHMSA, because §195.57 applies only to offshore pipelines and the KWPC pipeline is not an offshore pipeline pursuant to the definition in §195.2.

KWPC maintains that §195.57 only applies to pipelines located in the Gulf of Mexico in waters less than 15 feet if those pipelines *also* meet the definition of an offshore pipeline under §195.2. In accordance with the opinion of the United States Supreme Court in *United States v. Florida*, cited above, the KWPC Pipeline is located within the inland waters of the State of Florida and does *not* otherwise meet the definition of an offshore pipeline. At this time, KWPC seeks confirmation from your office that the pipeline condition reports required by §195.57 only pertain to *offshore* pipelines, as otherwise defined in §195.2 and that, given the location of the underwater portions of the KWPC pipeline, no such filing obligation would be imposed upon KWPC by §195.57.

Thanks for your consideration of this request for interpretation. We look forward to receipt of your response.

Sincerely yours,

Mark Rauch
President , Pipeline and Terminal Management Corp.

cc: William L. Pence, Esq. (BakerHostetler)
Donald Murphy (PHMSA)

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