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

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

MAR 25 2010

Ms. Dianne R. Phillips, Esq.
Holland & Knight
10 St. James Avenue
Boston, Massachusetts 02116

Re: Application of the Siting Requirements in Subpart B of 49 C.F.R. Part 193 to the Mount Hope Bay Liquefied Natural Gas Transfer System

Dear Ms. Phillips:

As counsel for the City of Fall River, Massachusetts (Fall River), you have asked the Pipeline and Hazardous Materials Safety Administration (PHMSA)[1] for a written interpretation[2] on the application of the Siting Requirements in Subpart B of 49 C.F.R. Part 193 to the Mount Hope Bay Liquefied Natural Gas (LNG) Transfer System (MHB Transfer System). The MHB Transfer System is a proposed addition to the waterfront LNG plant that Weaver's Cove Energy, LLC (Weaver's Cove or the Company) has proposed to build in Fall River (Fall River Plant or Plant).

In particular, you have asked this agency to confirm (1) whether our Siting Requirements apply to the offshore portion of the MHB Transfer System, as we recently concluded in a letter of interpretation to the Federal Energy Regulatory Commission (FERC); (2) whether, and if so to what extent, the requirements for "transfer areas for LNG" in the NFPA 59A: Standard for the Production, Storage, and Handling of LNG, 2001 Edition (2001 NFPA 59A), the consensus industry standard that is incorporated by reference into our Siting Requirements, apply to the MHB Transfer System; (3) whether, and if so to what extent, our Siting Requirements apply to the onshore portion of the MHB Transfer System; and (4) what design-spill criteria should be used in developing an alternative model for siting the MHB Transfer System's subsea pipe-in-pipe (PIP) LNG Transfer System.

Having considered your questions, we conclude (1) that our Siting Requirements apply to the offshore portions of the MHB Transfer System; (2) that the provisions for transfer areas for LNG in the 2001 NFPA 59A apply to the MHB Transfer System, except where preempted by our regulations; and (3) that our Siting Requirements, including any provisions in the 2001 NFPA 59A not preempted by our regulations, apply to the onshore portion of the MHB Transfer System.

With regard to your last question, we affirm our previous determination that using the standard models in Subpart B of 49 C.F.R. Part 193 to calculate the thermal radiation and vapor-gas

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[1] Prior to February 20, 2005, the Research and Special Programs Administration (RSPA) was the agency within the Department of Transportation (DOT) responsible for regulating pipeline safety. Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. 108-426, § 108, 118 Stat. 2423-2429 (Nov. 30, 2004); *see also* 70 Fed. Reg. 8299 (February 18, 2005). Before RSPA, the responsible agency was the Materials Transportation Bureau (MTB). Department of Transportation, Establishment of Materials Transportation Bureau, 40 Fed. Reg. 30821 (July 23, 1975). We will refer to all of these agencies as PHMSA in this letter for convenience.

[2] 49 C.F.R. § 190.11(b).

dispersion distances for the PIP LNG Transfer System is impracticable, and that Weaver's Cove must develop, and submit to the Administrator for approval, an alternative model for calculating those distances. We also agree that further guidance is needed on the design-spill criteria that should be used in developing that alternative model. However, as that guidance is still under technical review, we cannot provide a final response to your question at this time.

I. Background

In December 2003, Weaver's Cove filed an application with FERC to build a waterfront LNG plant in Fall River. As originally proposed, the Plant was to include an onshore storage tank and shoreline marine berth and cargo transfer system along the Taunton River. On that same date, Mill River Pipeline, LLC, an affiliate of Weaver's Cove, filed an application with FERC to build two onshore, lateral pipelines for delivering re-vaporized natural gas from the Fall River Plant to an existing interstate transmission line. In July 2005, FERC conditionally certificated both of these projects.[3]

In January 2009, Weaver's Cove asked FERC for permission to modify the design of the Fall River Plant—i.e., by replacing the shoreline marine berth and cargo transfer system with the MHB Transfer System, an offshore marine berth and 4.25-mile subsea PIP LNG Transfer System. Under the modified proposal, the marine berth would be located in the waters of Mount Hope Bay, Massachusetts, about 1-mile from the nearest shoreline, and contain piping, processing equipment, an impoundment system, booster pumps, and other facilities that would be used for transferring LNG from temporarily-moored vessels. The PIP LNG Transfer System would consist of two-parallel subsea LNG transfer lines—each containing a 24-inch inner carrier pipe, a layer of thermal insulation, a 30-inch outer pipe, and an exterior layer of concrete coating—located in the waters and lands beneath the Bay and Taunton River.[4]

In May 2009, FERC asked this agency for a written opinion on whether our Siting Requirements applied to the MHB LNG Transfer System and, if so, for further guidance on calculating the exclusion zones for that part of the Fall River Plant. In July 2009, we advised FERC that the MHB LNG Transfer System was a marine cargo transfer system subject to our Siting Requirements, but that our approved models could not be used to calculate the exclusion zone distances for the PIP LNG Transfer System. Accordingly, we informed FERC that Weaver's Cove should develop, and submit to our Administrator for approval, an alternative model for siting that part of the MHB LNG Transfer System.

We received your first letter shortly thereafter. Dated August 7, 2009, and apparently written without knowledge of our July 2009 letter to FERC, your letter stated that the Siting Requirements in Subpart B of 49 C.F.R. Part 193 should be applied to the MHB Transfer System, and that Weaver's Cove had not conducted an adequate exclusion-zone analysis of the onshore portion of that system—i.e., the point where the PIP LNG Transfer System connects with the conventional transfer piping for the Fall River Plant's LNG storage tank.

On September 3, 2009, Weaver's Cove provided this agency with further information on the MHB Transfer System and a written response to our July 2009 letter to FERC. In that response, the Company argued that the PIP LNG Transfer System is not part of the Fall River Plant's

[3] *Weaver's Cove Energy, LLC*, 112 FERC P 61070, 61527 (July 15, 2005).

[4] According to the documents provided by Weaver's Cove, the PIP LNG Transfer System would have a maximum instantaneous transfer rate of 12,000 cubic meters of LNG per hour, an average transfer rate of 8,500 cubic meters of LNG per hour, an operating pressure of 120-150 pounds-per-square-inch gauge, and a 50-year design life.

"marine cargo transfer system" under Part 193; therefore, an exclusion-zone analysis is not required under our Siting Requirements. The Company further argued that the PIP LNG Transfer System is not part of the Fall River LNG Plant's "transfer area for LNG" under the 2001 NFPA 59A; consequently, an exclusion-zone analysis is not required under that standard either. Later that same month, the Company provided FERC with a letter objecting to our exercise of siting jurisdiction over the MHB Transfer System based on its "plain reading" of 49 C.F.R. 193.2001(b)(4).

We received another letter from Weaver's Cove the following month. In that letter, dated October 5, 2009, the Company renewed its objection to our exercise of siting jurisdiction over the MHB Transfer System under 49 U.S.C. § 60101(a)(14) and 49 C.F.R. 193.2001(b)(4). In the alternative, it further argued that the PIP LNG Transfer System is "transfer piping," a component that is not part of a "cargo transfer system" under Part 193 or subject to the exclusion-zone provisions of our Siting Requirements. Weaver's Cove similarly argued that the PIP LNG Transfer System is "permanent plant piping," a component that is not subject to the exclusion-zone requirements for "transfer areas for LNG" in the 2001 NFPA 59A. The Company also stated that it had already performed an adequate exclusion-zone analysis for the offshore marine berth, the only part of MHB Transfer System that, they believe, requires such an analysis. Finally, the Company dismissed your prior objection to the adequacy of its exclusion-zone analysis of the onshore portion of the MHB LNG Transfer System, citing two letters FERC and PHMSA exchanged in April 2005 and May 2005, respectively.

You responded to Weaver's Cove's arguments in a letter to this agency dated November 6, 2009. In that letter, you reiterated that our Siting Requirements should apply to the MHB Transfer System, and that the Company had not yet performed an adequate exclusion-zone analysis of the onshore portion of the MHB Transfer System. With regard to the latter, you argued that the letters FERC and PHMSA exchanged in 2005 do not apply to the "novel" PIP LNG Transfer System. Instead, you asserted that both agencies have an obligation to determine the appropriate design-spill criterion for that portion of the MHB Transfer System, and that such a determination must be premised on "nothing less than a full guillotine break to provide the appropriate level of conservatism for this new technology." You further stated that your expert had analyzed a hypothetical failure of the PIP LNG Transfer System under these conditions, and that his analysis showed that Weaver's Cove could not satisfy our exclusion-zone requirements at the Fall River site.

Several weeks later, on November 23, 2009, you asked that we treat your November 6, 2009 letter as a request for a written interpretation from this agency under 49 C.F.R. § 190.11(b). On that same date, you also submitted the four specific questions noted at the outset of this letter.

We received two more letters from Weaver's Cove earlier this year. In the first letter, dated January 29, 2010, the Company asked that we immediately advise FERC that the MHB Transfer System complies with our Siting Requirements so that our sister agency could issue its draft Environmental Impact Statement for the modifications to the Fall River Plant. In the second letter, dated February 4, 2010, the Company stated that its prior letters to PHMSA addressed all of the matters raised in your November 2009 request for interpretation.

Finally, we received your most recent response in this matter by letter dated February 12, 2010. In that letter, you stated that Weaver's Cove had not yet complied with our July 2009 opinion to FERC or, by implication, our Siting Requirements.

II. Jurisdiction

Before turning to your specific questions, we will address the extent of our jurisdiction in this matter. Weaver's Cove argues that two provisions in the Pipeline Safety Laws, 49 U.S.C. § 60101(a)(14) and 49 C.F.R. § 193.2001(b)(4), preclude PHMSA from regulating "any part" of the MHB Transfer System that is "located in navigable waters," including the PIP LNG Transfer System. We disagree with the Company in both respects.

A. The Pipeline Safety Laws allow PHMSA to exercise jurisdiction beyond the shoreline of a waterfront LNG plant.

As part of the 1994 re-codification of title 49 of the United States Code, Congress enacted section 60101(a)(14) of the Pipeline Safety Laws, which states:

> "liquefied natural gas pipeline facility"—(A) means a gas pipeline facility used for transporting or storing liquefied natural gas, or for liquefied natural gas conversion, in interstate or foreign commerce; but (B) does not include any part of a structure or equipment located in navigable waters (as defined in section 3 of the Federal Power Act (16 U.S.C. 796)).[5]

Congress enacted the predecessor to section 60101(a)(14) in section 151 of the Pipeline Safety Act (PSA) of 1979, which stated:

> 'LNG facility' means any pipeline facility used for the transportation or storage of LNG, or for LNG conversion, in interstate or foreign commerce, but does not include any structure or equipment (or portion thereof) located in navigable waters (as defined in section 3(8) of the Federal Power Act (16 U.S.C. 796(8)) . . .[6]

An agency "must give effect to the unambiguously expressed intent of Congress."[7] Therefore, if the "traditional tools of statutory construction" demonstrate "that Congress had an intention on the precise question at issue, that intention is the law and must be given effect."[8] If, however, "the statute is silent or ambiguous with respect to the specific issue," an agency may fill that gap with a regulation, and that regulation is "given controlling weight unless . . . arbitrary, capricious, or manifestly contrary to the statute."[9]

Accordingly, our analysis of section 60101(a)(14) of the Pipeline Safety Laws "begin[s] with the language of the statute"[10] and the "presum[ption] that a legislature says in a statute what it means and means in a statute what it says . . ."[11] Congress drafted section 60101(a)(14) and

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[5] Pub. L. No. 103-272, § 60101(14), 108 Stat. 1302 (1994) (amending and renumbering 49 U.S.C. § 1671(12)).
[6] Pub. L. No. 96-129, § 151, 93 Stat. 989 (1979) (originally codified at 49 U.S.C. § 1671(12)); *Consolidated Hydro, Inc. v. FERC*, 968 F.2d 1258, 1259-1260 (D.C. Cir. 1992) (discussing the navigable waters provision in the Federal Power Act).
[7] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).
[8] *Id.* at 843, n. 9.
[9] *Id.* at 843-844.
[10] *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (stating that "in all statutory construction cases . . . [t]he first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case'") (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).
[11] *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

section 151 of the PSA with two corresponding clauses, and only used terms with explicit statutory definitions in the first clause of both statutes.[12] It did not, however, use statutorily-defined terms in 60101(a)(14)(B) or the second clause of section 151 of the PSA.[13] Moreover, a clear meaning for the two most important terms used in those clauses—structure and equipment—cannot be determined solely by examining the text of that specific provision,[14] "the language and design of the statute as a whole,"[15] or "the remainder of the statutory scheme."[16]

We do think, however, that the "proper construction" of the phrase "structure or equipment" can be derived from the "legislative history and . . . general objectives Congress sought to achieve" in enacting section 151 of the PSA and section 60101(a)(14).[17] According to the relevant authorities, one of the primary reasons for the PSA was to "[c]larify [the Department of Transportation's] authority to regulate the safety of LNG facilities,"[18] an objective accomplished in the first clause of section 151 of the PSA. In particular, Congress used terms with explicit definitions—and an accepted meaning and usage within the context of the Pipeline Safety Laws—to define an LNG facility in that part of the statute, thereby confirming that our authority "ha[d] always extended to liquefied natural gas"[19] and validating the steps we had already taken to regulate those facilities.[20]

But Congress enacted the second clause of section 151 of the PSA to serve a different purpose. By way of background, PHMSA and the United States Coast Guard (USCG) entered into a memorandum of understanding (MOU) on the regulation of waterfront LNG facilities in 1978,

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[12] 49 U.S.C. § 1671(4), (11), (13), (17) (1980) (previously defining pipeline facilities, LNG, LNG conversion, and interstate or foreign commerce for purposes of the Pipeline Safety Laws); 49 U.S.C. § 60101(a)(3), (11), (13) (currently defining gas pipeline facility, liquefied natural gas, liquefied natural gas conversion, and interstate or foreign commerce for purpose of the Pipeline Safety Laws.

[13] We think this demonstrates that Congress implicitly delegated PHMSA the authority to define the terms used in the second clause of section 151 of the PSA and section 60101(a)(14)(B). *Chevron*, 467 U.S. at 844.

[14] Congress used the terms "pipeline facility" and "gas pipeline facility" in the first clause of section 151 of the PSA and section 60101(a)(14)(A), respectively. However, it used the terms "structure" and "equipment" in the second clauses of the PSA and the current statutory provision. For that reason, we think the term "structure" can be reasonably construed as something other than a "pipeline facility" or "gas pipeline facility." Otherwise, Congress would not have used different terms in these two clauses of the statute. We also note that a generally-accepted definition of the term "structure" at the time of the PSA was "[t]hat which is built or constructed"—i.e., "a building or edifice of any kind." THE OXFORD ENGLISH DICTIONARY 1165 (1970); *see FDIC v. Meyer*, 510 U.S. 471, 476 (1994) (using contemporaneous dictionary definition to determine the "ordinary or natural meaning" of statutory term); *see also National R.R. Passenger Corp. v. Boston and Maine Corp.*, 503 U.S. 407, 418-420 (1992) (affirming agency's use of dictionary definition in interpreting language of ambiguous statute). Under that definition, a "pipeline facility" could be construed as a type or component of a "structure". On the other hand, it would also support the view that a "structure" is something that houses or contains a "pipeline facility".

[15] *Bethesda Hosp. Ass'n v. Bowen*, 485 U.S. 399, 405 (1988).

[16] *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 US 365, 371 (1988). The terms "structure" and "equipment" are only used together in one other provision in the Pipeline Safety Laws. However, that provision, 49 U.S.C. § 60103(d), does not provide a clear meaning for those terms for purposes of section 60101(a)(14)(B).

[17] *Wirtz v. Bottle Blower's Ass'n*, 389 U.S. 463, 468 (1968).

[18] S. REP. NO. 96-182 (May 15, 1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1975.

[19] *Id.* at 1978; *see also* H. REP. NO. 96-201, Part I, p. 22 (1979) (stating that "the [C]ommittee [on Interstate and Foreign Commerce] does not intend to express approval or disapproval of an particular siting standards" issued under the PSA, and that, "[i]n this regard, the committee views as very important the Department's present rulemaking proceeding, pursuant to section 3(a) of the Natural Gas Pipeline Safety Act of 1968, regarding LNG safety.").

[20] Office of Pipeline Safety, Liquefied Natural Gas Safety Standards, 37 Fed. Reg. 145 (January 6, 1972); Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards, Liquefied Natural Gas Systems, 37 Fed. Reg. 21638 (October 13, 1972).

one year before the enactment of the PSA.[21] That MOU stated that PHMSA would be responsible for issuing regulations on facility site selection, except with respect to vessel traffic management. It also stated that this agency would regulate all other matters inward from the last manifold (or valve) located immediately before the onshore LNG storage tank. Conversely, USCG would be responsible for regulating fire prevention and facility security, site selection in relation to vessel traffic management, and all other matters between the vessel and the last manifold (or valve) located immediately before the onshore LNG storage tank.

Shortly thereafter, the Secretary of Transportation (Secretary) issued a delegation of authority on the implementation of that MOU.[22] In his delegation, the Secretary provided USCG, then a modal administration within DOT, with the power to exercise PHMSA's preemptive rulemaking authority[23] when issuing regulations for waterfront LNG facilities. That action, the Secretary explained, was needed to compensate for the absence of analogous authority in the Ports and Waterways Safety Act (PWSA), USCG's primary basis for regulating such facilities.[24] He further explained that if USCG had to implement the MOU solely under the authority provided in the PWSA, it could create "the unacceptable situation of a nonuniform approach to Federal/State regulation"—i.e., the interior portion of the facility would be covered by PHMSA's preemptive federal standards, while the maritime portion would be subject to USCG's standards and, potentially, more stringent state standards. Thus, he issued a limited delegation of our rulemaking authority "[f]or the purpose of assuring continued regulation of an entire waterfront LNG facility."[25]

Ten months later, Congress responded to these actions by the Secretary and enacted the second clause of section 151 of the PSA. Rather than limiting our jurisdiction, that provision was designed to retroactively void, and prospectively prohibit, a delegation of our preemptive rulemaking authority to USCG.[26]

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[21] Notices, Department of Transportation, Memorandum of Understanding Between the United States Coast Guard and the Materials Transportation Bureau for Regulation of Waterfront Liquefied Natural Gas Facilities, 43 Fed. Reg. 30381 (July 14, 1978).

[22] 49 C.F.R. § 1.46(y) (1979) (secretarial delegation of authority to USCG to exercise preemptive rulemaking authority under NGPSA in issuing regulations for waterfront LNG facilities).

[23] *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465, 470 (8th Cir. 1987) ("The NGPSA leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, or identical to the federal standards.").

[24] *Compare* 44 Fed. Reg. 5436, 5437 (Jan. 26, 1979) ("For the purpose of assuring continued uniform regulation of an entire waterfront LNG facility, the delegation of authority made by this amendment will permit the USCG to carry out its regulatory responsibilities . . . with same preemptive powers available to MTB[, PHMSA's predecessor]."); *with* 33 U.S.C. § 1225(b) ("Nothing contained in this section, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those which may be prescribed by regulations [issued by USCG] hereunder.").

[25] 44 Fed. Reg. at 5437.

[26] S. REP. NO. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1997 ("The purpose of this exclusion is to clarify and emphasize that, in its regulation of the safety of LNG and other hazardous materials facilities, the Coast Guard was, and is, intended to operate exclusively under the authority of the Ports and Waterways Safety Act, as amended (33 U.S.C. et seq.)."); CONG. REC., U.S. Senate, 96th Congress, 1st session, 32336 (Nov. 14, 1979) ("While S. 411 provides authority to the Secretary of Transportation, it is intended that the Secretary delegate that authority to the Materials Transportation Bureau. Last year when the Congress enacted the Port and Tanker Safety Act, which amends the Port and Waterways Safety Act, we intended that the law would be the exclusive and comprehensive authority for the Coast Guard to regulate the safety of hazardous materials facilities. This is still our intent; the Coast Guard is not intended to exercise authority under this act.") (Statement of Senator Warren Magnuson).

We note that our analysis of Congress' original intent is corroborated by the text of section 151 of the PSA. Indeed, the terms "structure" and "equipment" are used throughout the PWSA, including in the State savings clause provision,[27] but are used sparingly and without any particular significance in the Pipeline Safety Laws.[28] We also note that this agency and USCG both affirmed the validity of this interpretation in contemporaneous rulemaking proceedings—i.e., in an August 1980 final rule[29] and May 1986 notice of proposed rulemaking.[30] We further note that there is no evidence that Congress intended to alter its original intent or affect any of the actions taken to implement section 151 of the PSA when it enacted section 60101(a)(14).[31]

In summary, we conclude that while a clear meaning for section 60101(a)(14)(B) cannot be determined solely by examining the text of that provision or the remaining provisions in the Pipeline Safety Laws, the legislative history shows that Congress did not intend that statute to

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[27] 33 U.S.C. §§ 1221(c)(2)-(4), 1223(a)(3), (6), 1224(a)(4), 1225(a)(1)-(2), (b), 1226(a)(1), (b)(3), 1227(a).

[28] *See* note 16, *supra*.

[29] Research and Special Programs Administration, Liquefied Natural Gas Facilities; Reconsideration of Safety Standards for Siting, Design, and Construction, 45 Fed. Reg. 57402, 57417-57418 (Aug. 28, 1980).

[30] Department of Transportation, U.S. Coast Guard, Liquefied Natural Gas Waterfront Facilities, Notice of Proposed Rulemaking, 51 Fed. Reg. 18276, 18277-18278 (May 16, 1986). In this document, USCG offered the following analysis of the legislative history of section 151 of the PSA:

> Section 4 of the [Natural Gas Pipeline Safety Act of 1968] NGPSA (49 U.S.C. 1672(a)(1)), as amended, allows state agencies to adopt additional or more stringent safety standards for intrastate pipeline transportation if such standards are compatible with the Federal minimum standards. However, this section prohibits those agencies from adopting or continuing in force any such standards applicable to interstate transmission facilities, after the Federal minimum standards become effective. No similar preemptive authority is granted by the PWSA, as amended. Without such preemption, it would be possible for an LNG facility to have to operate under the requirements of two Federal agencies and the State and local governments.
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> To ensure uniformity in regulating all LNG waterfront facilities, the Secretary of Transportation delegated to the Coast Guard certain functions and responsibilities vested in the Secretary by the NGPSA . . . . This delegation, which appeared in the January 26, 1979 issue of the Federal Register (44 FR 5436) as an amendment to 49 CFR 1.46, allowed the Coast Guard to carry out the Secretary's responsibilities under the NGPSA, as amended, in accordance with the MOU, and, in effect, bestowed the same preemptive authority to the Coast Guard as delegated to the [Research and Special Programs Administration] RSPA. . . .
>
> However, subsequent legal review and legislative activity resulted in the determination that the Coast Guard does not have authority to regulate LNG waterfront facilities under the NGPSA, as amended by the [Pipeline Safety Act of 1979] PSA. The legislative history of the various statutes made it clear that Congress intended that the Coast Guard regulate LNG waterfront facilities exclusively under authority of the PWSA. This is supported by the definition of LNG facilities added by the PSA that excludes "any structure or equipment (or portion thereof) located in the navigable waters . . ." Therefore, Coast Guard regulations for LNG waterfront facilities will be issued under authority of the PWSA, which does not prohibit State or political subdivisions thereof from prescribing higher safety equipment requirements or safety standards for facilities than those which may be prescribed through this rulemaking process.

Id. (italics added).

[31] H. REP. NO. 103-180 at 441 (1993), *reprinted in* 1994 U.S.C.C.A.N. 818, 1258; *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change."); *CFTC v. Schor*, 478 U.S. 833, 846 (1986) ("It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" (citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274-75 (1974)).

serve as an independent limitation on our jurisdiction. Rather, its original purpose was to preclude USCG from acquiring and using our preemptive rulemaking authority to issue regulations for waterfront LNG facilities.[32] Accordingly, we reject Weaver's Cove argument that the text of section 60101(a)(14)(B) prohibits PHMSA from exercising jurisdiction beyond the shoreline of a waterfront LNG plant and affirm the determination in our July 2009 letter to FERC—namely, that the application of our Siting Requirements to the MHB Transfer System is authorized by the Pipeline Safety Laws.

> B. The Siting Requirements in Subpart B of Part 193 of the Pipeline Safety Regulations apply to an LNG facility that is located in navigable waters, if that facility is a part of or associated with a marine cargo transfer system at a waterfront LNG plant.

The full text of the provision that forms the basis of Weaver's Cove second argument states:

> **§ 193.2001 Scope of part.**
>
> (a) This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the pipeline safety laws (49 U.S.C. 60101 et seq.) and Part 192 of this chapter.
>
> (b) This part does not apply to:
>
> (1) LNG facilities used by 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)).[33]

The Company argues that a plain reading of section 193.2001(b)(4) prohibits PHMSA from exercising jurisdiction over "[a]ny LNG facility located in navigable waters," including nearly all of the MHB Transfer System.[34] We begin by noting that this interpretation "destroy[s]" a critical part of section 193.2001(b)(3)—i.e., it renders "inoperative or superfluous, void or insignificant . . ."[35] the explicit reservation of our siting authority over the "marine cargo transfer system and associated facilities."[36] We find that result unnecessary as a more reasonable construction exists that gives full effect to both of these provisions.

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[32] As noted in our July 2009 letter to FERC, the Homeland Security Act of 2002, Pub. L. No. 107-296, § 888 (2002) (codified at 6 U.S.C. § 468), undermined the original purpose of the navigable waters clause in section 60101(14) by transferring USCG from DOT to the Department of Homeland Security (DHS), which presently precludes any delegation of PHMSA's preemptive rulemaking authority to USCG. Department of Transportation, Coast Guard, Liquefied Natural Gas Waterfront Facilities; Proposed Rule, 51 Fed. Reg. 18275, 18277 (May 16, 1986).

[33] 49 C.F.R. § 193.2001; *see also* 49 C.F.R. § 193.2007 (defining LNG facility).

[34] 49 C.F.R. § 193.2001(b)(4).

[35] *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1993) (quoting 2A Norman J. Singer, Sutherland, Statutes and Statutory Construction, § 46.06, at 119-20 (5th ed. 1992)). "Regulations, like statutes, are interpreted according to canons of construction." *Black & Decker Corp. v. C.I.R.*, 986 F.2d 60, 65 (4th Cir. 1993). Consequently, we agree that "[w]hen construing a regulation . . ., it is appropriate first to examine the regulatory language itself to determine its plain meaning." *Roberto v. Dep't of Navy*, 440 F.3d 1341, 1350 (Fed. Cir. 2006). However, we are mindful that a regulation "'should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.'" *Silverman* , 51 F.3d at 31.

[36] 49 C.F.R. § 193.2001(b)(3).

We adopted the current version of section 193.2001(b)(4) and a prior version of section 193.2001(b)(3) in a February 1980 Final Rule (FR).[37] With regard to the latter, the prior language in subparagraph (b)(3) was identical in every respect to the current provision, except that it omitted the phrase "other than siting".[38] In the preamble to the February 1980 FR, we stated that section 151 of the PSA required both of these regulations, as "[i]t was the intent of Congress that such facilities be regulated under the Ports and Waterways Safety Act,"[39] and that subparagraphs (b)(3) and (b)(4) "would exempt facilities in navigable waters from the scope of Part 193," including "facilities located offshore."[40]

However, we reversed that position and adopted the current version of section 193.2001(b)(3) six months later.[41] Specifically, in an August 1980 FR on reconsideration, we stated that the prior version of section 193.2001(b)(3) had erroneously "exempt[ed] marine cargo transfer systems from any of the requirements in Part 193," even though "[u]nder the MTB/USCG memorandum of understanding (MOU) on the regulation of waterfront LNG facilities . . ., the siting of these facilities, except with respect to vessel traffic management, is subject to the MTB regulatory authority."[42] Consequently, we amended subparagraph (b)(3) of the regulation to ensure that our Part 193 Siting Requirements applied to marine cargo transfer systems.[43]

In light of the regulatory history, we think that the key to interpreting these provisions is recognizing that subparagraph (b)(3) only applies to waterfront LNG plants and that subparagraph (b)(4) applies to all other offshore LNG facilities. With respect to the former, the regulatory history confirms that we adopted subparagraph (b)(3) to codify the terms of our 1978 MOU with USCG—i.e., to make the requirements in Part 193 applicable to the siting of an entire waterfront LNG plant, including the marine cargo transfer system and associated facilities, and the design, construction, maintenance, operation, and security of the onshore portions of those plants, while (2) excluding the maritime portions of those facilities for regulation by USCG under the PWSA. That interpretation is consistent with our statutory authority, the text and history of the regulation, and the expertise of these two agencies.[44]

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[37] Department of Transportation, Research and Special Programs Administration, Liquefied Natural Gas Facilities; New Federal Safety Standards, 45 Fed. Reg. 9184, 9204 (February 11, 1980).
[38] 45 Fed. Reg. at 9204.
[39] *Id.* at 9188.
[40] *Id.*
[41] Research and Special Programs Administration, Liquefied Natural Gas Facilities; Reconsideration of Safety Standards for Siting, Design, and Construction, 45 Fed. Reg. 57402 (August 28, 1980).
[42] *Id.* at 57418.
[43] *Id.* We also stated in that same FR that we intended our siting requirements to apply to those parts of a marine cargo transfer system that "approach and cross an operator's property line at the shoreline." *Id.* at 57407.
[44] Our current MOU states that "USCG is responsible for establishing regulatory requirements for . . . [f]acility site selection as it relates to management of vessel traffic[,]" and that PHMSA "is responsible for establishing regulatory requirements for . . . [s]ite selection of facilities other than structures or equipment (or portions thereof) located in navigable waters . . ." *Id.* The MOU's exclusion from our siting authority of "structures or equipment (or portions thereof) located in navigable waters" affirms that PHMSA will not issue siting regulations for piers or wharves and related equipment, which have been traditionally regulated by USCG (or, where appropriate, states and localities) under the PWSA. *United States v. Certain Parcel of Land Situated in the City of Valdez*, 666 F.2d 1236, 1238-1239 (9th Cir. 1982) (concluding that "a ferry terminal facility consisting of three wooden ramps used as a dock, and twelve cluster pile dolphins," i.e., "closely driven piles used a fender for a dock or as a mooring or guide for boats," was a structure "within navigable waters" under Title I of the PWSA). That construction is consistent with the text of 49 C.F.R. § 193.2001(b)(3), and any contrary interpretation of the MOU, including one that deprives PHMSA of siting authority over a marine cargo system and associated facilities, would amount to a repeal of that regulation, an action that can only be undertaken in a rulemaking proceeding under the Administrative Procedure Act.

Conversely, subparagraph (b)(4) was meant to render Part 193 inapplicable to all other offshore LNG facilities—i.e., those located in navigable waters and not a part of, or associated with, a waterfront LNG plant. That construction is consistent with our statutory authority, particularly the prohibition in the Pipeline Safety Laws on determining "the location or routing of pipeline facility,"[45] and Congress' previous refusal to authorize the licensing of offshore LNG facilities in the Deepwater Port Act (DPA) of 1974,[46] a decision that eliminated the need to apply Part 193 to such facilities at the time of the February 1980 and August 1980 FRs.[47]

Accordingly, we reject Weaver's Cove argument that section 193.2001(b)(4) excludes any LNG facility located in navigable waters from the scope of Part 193. Instead, we affirm our prior determination that PHMSA's Siting Requirements are applicable under section 193.2001(b)(3) if an LNG facility located in navigable waters is part of, or associated with, a marine cargo transfer system.

III. Questions Presented

Question 1: Is the Mount Hope LNG Transfer System Subject to Our Siting Requirements as a Marine Cargo Transfer System and Associated Facilities under 49 C.F.R. § 193.2001(b)(3)?

In our July 2009 letter to FERC, we concluded that the MHB Transfer System is a marine cargo transfer system—i.e., "a component, or system of components functioning as a unit, used exclusively for transferring hazardous fluids in bulk between a . . . marine vessel and a storage tank."[48] Weaver's Cove believes that we erred in reaching that conclusion, and you have asked whether we will affirm our prior position.

The Company's argument is based on section 193.2007, which states, in relevant part:

> As used in this part:
>
> . . .
>
> *Cargo transfer system* means a component, or system of components functioning as a unit, used exclusively for transferring hazardous fluids in bulk between a tank car, tank truck, or marine and vessel and storage tank.
>
> *Component* means any part, or system of parts functioning as a unit, including, but not limited to, piping, processing equipment, containers, control devices, impounding systems, lighting, security devices, fire control equipment, and communication equipment, whose integrity or reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid.
>
> . . .

[45] 49 U.S.C. § 60104(e).
[46] Pub. L. No. 93-627, §§ 3(10), 4(A)(1), 88 Stat. 2176 (1975).
[47] *But see* Maritime Transportation Security Act of 2002, Pub. L. 107-295, Tit. I, § 106(a)(3), 116 Stat. 2086 (2002) (amending the DPA to include "natural gas").
[48] 49 C.F.R. § 193.2007.

> *Transfer piping* means a system of permanent and temporary piping used for transferring hazardous fluids between any of the following: Liquefaction process facilities, storage tanks, vaporizers, compressors, cargo transfer systems, and facilities other than pipeline facilities.
>
> *Transfer system* includes transfer piping and cargo transfer system.[49]

Weaver's Cove argues that the PIP LNG Transfer System is not part of the Fall River LNG Plant's marine cargo transfer system. Specifically, the Company argues that under our definition of "transfer system," "transfer piping" and "cargo transfer system" are independent and mutually exclusive components, and that the marine "cargo transfer system" at the Fall River LNG Plant is the processing equipment on the marine berth. Weaver's Cove further argues that the PIP LNG Transfer System is merely "transfer piping," and that, by definition, only the processing equipment on the marine berth is subject to our Siting Requirements. According to the Company, our decision to rescind the regulations that previously required impoundment systems for "transfer systems" in a March 2000 FR supports these conclusions.

We note that Weaver's Cove arguments proceed from a pair of flawed premises—namely, (1) that a "cargo transfer system" and "transfer piping" are independent and mutually exclusive components and (2) that a "cargo transfer system" and "transfer piping" are the only two "transfer systems" recognized in our regulations. With regard to the first premise, the original version of Part 193 contradicts Weaver's Cove's assertion that transfer piping cannot, by definition, be part of a cargo transfer system. Indeed, in a section of those regulations entitled "Design of Transfer Systems," it specifically stated that "[e]ach cargo transfer system must have . . . [t]ransfer piping . . . located or protected by suitable barriers so that they are safe from damage by tank car or tank truck movements[.]"[50] With regard to the second premise, the general rules of regulatory construction for Part 193 do not support the Company's interpretation of our definition of a "transfer system." Under those rules, the term "[i]ncludes means including but not limited to . . ."[51] Consequently, when our regulation says that a transfer system "includes" transfer piping and cargo transfer system, it simply means that the former and latter are examples of a transfer system, not that these two components are necessarily independent or mutually exclusive.[52]

With that in mind, we will now reconsider whether the MHB Transfer System is a marine cargo transfer system. As currently proposed, the MHB Transfer System would include an offshore marine berth, with hoses, unloading arms, piping, and processing equipment used for transferring LNG, and the PIP LNG Transfer System, a pair of subsea LNG transfer lines that connect with the aforementioned berth facilities and terminate at the Fall River Plant's onshore storage tank.

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[49] LNG is defined as a hazardous fluid for purposes of these definitions. 49 C.F.R. 193.2007 (defining hazardous fluid and hazardous liquid).

[50] 49 C.F.R. § 193.2229(a)(3) (italics added).

[51] 49 C.F.R. § 193.2009(a)(1).

[52] We further note that the inclusion of "transfer piping" within the definition of "transfer system" had other historical significance—i.e., eliminating the issuance of redundant design regulations and ensuring that all transfer piping, including that which was not a part of a "cargo transfer system[,]" fell within the scope of our Siting Requirements. 49 C.F.R. § 193.2051. The latter would include, for example, transfer piping used to transfer LNG between storage tanks. We also note that a separate regulation in that section applied to the "[c]argo transfer area." 49 C.F.R. § 193.2231. It stated that this "[t]ransfer area was part of a cargo transfer system," but did not made any references to or include any requirements for transfer piping, hoses, or arms. *Id.*

We think that these facilities are, collectively, a "system of components used exclusively for transferring hazardous fluids in bulk between a . . . marine vessel and a storage tank"[53] at a waterfront LNG plant.[54]

Moreover, the PIP LNG Transfer System would still be subject to our Siting Requirements even if Weaver's Cove's premise is correct and the Fall River Plant's marine cargo transfer system consists solely of the hoses, unloading arms, piping, and processing equipment on the offshore marine berth. In that respect, we note that Part 193 of the Pipeline Safety Regulations explicitly reserves our siting authority over a waterfront LNG plant's "marine cargo transfer system and associated facilities."[55] We also note that the PIP LNG Transfer System would be used exclusively for transferring LNG in bulk, that it would be connected to the components on the marine berth that perform that same function, and that it would be located between the marine vessel and storage tank. Thus, assuming that the PIP LNG Transfer System is not a part of the Fall River Plant's marine cargo transfer system, our Siting Requirements would still apply to that "associated facility."[56]

For these reasons, we affirm our conclusion that the MHB Transfer System is a marine cargo transfer system under section 193.2001(b)(3), and that our Siting Requirements apply to all of its components and associated facilities, including the PIP LNG Transfer System.

> *Question 2: To what extent do the requirements for "transfer areas for LNG" in the 2001 NFPA 59A apply to the Mount Hope LNG Transfer System?*

Though subject to regulatory preemption in the event of conflict, the requirements in the 2001 NFPA 59A are incorporated into our Siting Requirements by reference. Specifically, section 193.2051 states:

> Each LNG facility designed, constructed, replaced, relocated or significantly altered after March 31, 2000 must be provided with siting requirements in accordance with the requirements of this part and of [the 2001] NFPA 59A (incorporated by reference, *see* § 193.2013). In the event of a conflict between this part and NFPA 59A, this part prevails.[57]

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[53] 49 C.F.R. § 193.2007 (defining cargo transfer system).

[54] The term "component" has a very broad meaning in Part 193—i.e., "any part, or system of parts functioning as a unit . . . whose integrity or reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid." 49 C.F.R. § 193.2007. Indeed, we used the term "component" in our regulations for two decades when imposing general requirements for LNG plants. *See e.g.*, 49 C.F.R. §§ 193.2101, 193.2103, 193.2105, 193.2107, 193.2119, 193.2121, 193.2135, 193.2137, 193.2139, 193.2143, 193.2155(a)(5)(i), 193.2159(a)-(b), 193.2161(b), 193.2165, 193.2179(a), 193.2183(a), 193.2193(a)(1), 193.2301, 193.2303, 193.2304, 193.2305, 193.2307(a)(2), 193.2311, 193.2317, 193.2323(a), 193.2329, 193.2429(a)-(b), 193.2439, 193.2443, 193.2503, 193.2505, 193.2507, 193.2515(c), 193.2517, 193.2601, 193.2605, 193.2607, 193.2609, 193.2615, 193.2617, 193.2625, 193.2627, 193.2631, 193.2633, 193.2635, 193.2639 (1981). Moreover, we considered "transfer piping," "cargo transfer system," and "transfer system" to be types of "components" for purposes of those requirements. 49 C.F.R. §§ 193.2193(a)(1) ("The amount and pattern of predictable movement of *components, including transfer piping* . . .), 193.2319(a) ("A strength test must be performed on each *piping system* and container to determine whether the *component* is capable of performing its design function . . ."), 193.2439(a) ("Each *transfer system*, vaporizer, liquefaction system, and storage system tank must be equipped with an emergency shutdown control system. The control must automatically actuate the shutdown of the *component* . . .") (italics added).

[55] 49 C.F.R. § 193.2001(b)(3).

[56] *Id.*

[57] 49 C.F.R. §§ 193.2013, 193.2051.

Turning to your specific question, there are several requirements in the 2001 NFPA 59A that apply to "[t]ransfer areas for LNG."[58] A "transfer area" is defined for these purposes as:

> That portion of an LNG plant containing a piping system where LNG, flammable liquids, or flammable refrigerants are introduced into or removed from the facility, such as truck loading or ship unloading areas, or where piping connections are connected or disconnected routinely. Transfer areas do not include product sampling devices or permanent plant piping.[59]

Our Siting Requirements have never used the phrases "transfer area" or "transfer areas for LNG."[60] Rather, we have always used the term "LNG transfer system,"[61] and a "transfer system" has always been defined to "include[] transfer piping and cargo transfer system."[62] Furthermore, unlike the exclusion of "permanent plant piping" from a "transfer area" in the 2001 NFPA 59A, the definition of "transfer piping" in Part 193 has always included both "permanent and temporary piping."[63] Likewise, the 2001 NFPA 59A does not require that thermal radiation and vapor gas dispersion distances be calculated for "transfer areas at the water's edge of marine terminals,"[64] but our Siting Requirements have always required that those distances be determined for marine cargo transfer systems.[65] In other words, there is a conflict between the 2001 NFPA 59A and our Siting Requirements on the use and definition of these terms, and the requirements in Subpart B of 49 C.F.R. Part 193 must prevail in the event of such conflict.

With that principle in mind, we will now consider the extent to which the siting requirements for transfer areas for LNG in the 2001 NFPA 59A apply to the MHB Transfer System. Weaver's Cove argues that the PIP LNG Transfer System is "permanent plant piping," a component that is exempt from the exclusion-zone requirements for "transfer areas for LNG" in the 2001 NFPA 59A. We will assume, for purposes of this letter, that the Company is correct on these points.[66]

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[58] One of those provisions states, for example, that such areas "shall be graded, drained, or provided with impoundment in a manner that will minimize the possibility of accidental spills and leaks from endangering important structures, equipment, or adjoining property or from reaching waterways." 2001 NFPA 59A, 2-1.2. Similarly, another provision states that "[i]mpounding areas, if . . . provided to serve only . . . LNG transfer areas, shall have a minimum volumetric capacity equal to the greatest volume of LNG . . . that can be discharged into the area during a 10-minute period from any single accidental leakage source or a lesser time period based upon demonstrable surveillance and shutdown provisions acceptable to the authority having jurisdiction." 2001 NFPA 59A, 2.2.2.2. The 2001 NFPA 59A permits the waiver or alteration of some of these requirements "[i]n certain installations . . . at the discretion of the authority having jurisdiction where the change does not constitute a distinct hazard to life or property or conflict with applicable federal, state, and local (national, provincial, and local) regulations." 2001 NFPA 59A, 2.2.1.3.

[59] 2001 NFPA 59A, 1.7.27. This definition first appeared in the 1975 NFPA 59A, ch. 1, 12(28).

[60] We have never defined a "transfer area" in Part 193 and have only used that term sparingly. For example, our original design requirements for "transfer systems" stated, in relevant part, that "[t]he transfer area of a cargo transfer system must . . . accommodate tank cars and tank trucks without excessive maneuvering . . . and . . . permit tank trucks to enter or exit the transfer area without backing." 49 C.F.R. § 193.2231 (1981). Similarly, one of our current regulations for the onshore portion of an LNG plant states, in relevant part, that "the procedures for cargo transfer must be located at the transfer area[.]" 49 C.F.R. § 193.2513(c).

[61] 49 C.F.R. §§ 193.2057, 193.2059.

[62] 49 C.F.R. § 193.2007 (italics omitted).

[63] 49 C.F.R. § 193.2007.

[64] 2001 NFPA 59A, 2.2.3.1.

[65] 49 C.F.R. § 193.2001(b)(3); *In the Matter of Yukon Pacific Corp.*, PHMSA Interp. # 93-040 (Jul. 17, 1993) (stating that transient traffic, including by fishing boats and cruise ships, is not an impermissible activity within an offshore vapor-gas-dispersion exclusion zone).

[66] 2001 NFPA 59A, 1.7.19 (defining "LNG Plant" as "[a] plant whose components are used to store liquefied natural gas and may also condition, liquefy, or vaporize natural gas"), 1.7.19 (defining "[c]omponents" as "[a] part, or a system of parts, that functions as a unit in an LNG plant and could include, but is not limited to, piping . . .").

However, if that is the case, then the requirements in the 2001 NFPA 59A are in conflict with the provisions for an "LNG transfer system" in Part 193—i.e., as previously noted, our regulations do not distinguish between permanent and temporary plant piping, and each "LNG transfer system," including a marine cargo transfer system and associated facilities, must have a thermal radiation and vapor gas dispersion exclusion zone under our Siting Requirements. As our regulations must prevail in the event of a conflict, we conclude that PIP LNG Transfer System requires an exclusion zone analysis under Subpart B of 49 C.F.R. Part 193, and that any contrary provisions in the 2001 NFPA 59A are preempted.

In reaching this determination, we are mindful of the conservative approach that this agency has taken when applying our Siting Requirements[67] to novel facilities, like the MHB Transfer System.[68] We are also mindful that under Weaver's Cove interpretation, the 4.25-mile-long PIP LNG Transfer System would not be subject to any meaningful federal siting requirements, a result that we do not think is in the interests of public safety.[69]

In conclusion, we find that the requirements in the 2001 NFPA 59A for "transfer areas for LNG" apply to the MHB Transfer System, except where preempted by the regulations in 49 C.F.R. Part 193. We further conclude that to the extent that the provisions for "transfer areas for LNG" in the 2001 NFPA 59A would not require an exclusion-zone analysis of the PIP LNG Transfer System, those requirements are in conflict with the provisions for "LNG transfer systems" in our Siting Requirements, that our regulations must prevail, and that an exclusion-zone analysis of the PIP LNG Transfer System is required under Subpart B of 49 C.F.R. Part 193.

> *Question 3: To what extent, if any, do the Siting Requirements in Subpart B of 49 C.F.R. Part 193 apply to the onshore portion of the MHB Transfer System?*

With regard to the application of our Siting Requirements to the onshore portion of the MHB Transfer System, we reiterate that the requirements in the 2001 NFPA 59A for "transfer areas for LNG" apply to the MHB Transfer System, except where preempted by the regulations in Part 193 of the Pipeline Safety Regulations. We also reiterate that to the extent that the provisions for "transfer areas for LNG" in the 2001 NFPA 59A would not require an exclusion-zone analysis of the PIP LNG Transfer System, those requirements are in conflict with the provisions for "LNG transfer systems" in our Siting Requirements, that our regulations must prevail, and that an

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Though we need not resolve this question, we wonder whether the drafters of the 2001 NFPA 59A would consider a 4.25-mile system of subsea transfer piping to be "permanent plant piping,", or whether that standard should is suitable for use in siting an offshore LNG facility, particularly one comparable to the Mount Hope Bay LNG Transfer System.

[67] *In the Matter of Energy Terminal Services Corporation*, PHMSA Interp. 82-05-28 (May 28, 1982) (stating that we selected our original vapor-gas-dispersion model because, among other reasons, "it appeared to predict conservative distances in comparison with other available mathematical models," that "[49 C.F.R.] § 193.2059 requires use of the model as a conservative standard of protection," and that a "construction of th[at] standard [which] yields a conservative result . . . is supported by the preamble to the [February 1980] final rule" that contained the original Siting Requirements).

[68] *Id.* (finding that the design and functioning of the applicant's proposed impoundment system—i.e., a 16-foot-high fence that would retain any LNG spill and produce a confined vapor volume—could not be accommodated by our approved vapor-gas-dispersion model, that a conservative application of that model required that the proposed design of the system be disregarded, and that the applicant could not demonstrate compliance with our vapor-gas-dispersion exclusion-zone requirement under those conditions).

[69] With regard to Weaver's Cove arguments about the March 2000 FR, we note that any statements about the application of our Siting Requirements to conventional transfer piping are not applicable to the novel PIP LNG Transfer System, for which little or no operating data or historical information is available.

exclusion-zone analysis of the PIP LNG Transfer System is required under Subpart B of 49 C.F.R. Part 193.

IV. Conclusion

For the reasons stated in Part III of this letter, we conclude (1) that our Siting Requirements apply to the offshore portions of the MHB Transfer System; (2) that the provisions for transfer areas for LNG in the 2001 NFPA 59A apply to the MHB Transfer System, except where preempted by our regulations; and (3) that our Siting Requirements, including any provisions in the 2001 NFPA 59A not preempted by our regulations, apply to the onshore portion of the MHB Transfer System.

With regard to your last question, we affirm our prior determination that using the standard models in Subpart B of 49 C.F.R. Part 193 to calculate the thermal radiation and vapor-gas dispersion distances for the PIP LNG Transfer System is impracticable, and that Weaver's Cove must develop, and submit to the PHMSA Administrator for approval, an alternative model for calculating those distances. We also agree that further guidance is needed on the design-spill criteria that should be used in developing that alternative model. However, as that guidance is still under technical review, we cannot provide a final response to your question at this time.

Sincerely,

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