

No. 108; Lamps, reflective devices and associated equipment, Part 564 submissions are referenced as being the source of information regarding the performance and interchangeability information for legal headlamp light sources, whether original equipment or replacement equipment. Thus, the submitted information about headlamp light sources becomes the basis for certification of compliance with FMVSS No. 108.

*Estimated Total Annual Burden:* 28.

*Estimated Number of Respondents:* 7.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the function of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collected; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: February 5, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2006-25026]

#### Pipeline Safety: Grant of Special Permit; Key West Pipeline Company

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice; grant of special permit.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) is granting Key West Pipeline Company (KWPC) a special permit waiving compliance from the Federal pipeline safety regulations 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. PHMSA finds that granting this special permit is not inconsistent with pipeline safety because the special permit analysis

shows that the KWPC exposed underwater pipeline segment is in a restricted, shallow channel with surrounding water depths that would cause vessels to run aground before contacting the exposed underwater pipeline segment. Also, the United States Coast Guard (USCG) has determined that placing a marker in the channel over the center of the exposed underwater pipeline segment would pose a hazard to navigation.

#### FOR FURTHER INFORMATION CONTACT:

Wayne Lemoi at (404) 832-1160 or by e-mail at [Wayne.Lemoi@dot.gov](mailto:Wayne.Lemoi@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Special Permit Request

*Pipeline Operator:* KWPC petitioned PHMSA on January 10, 2006, for a special permit waiving compliance from the Federal pipeline safety regulations in 49 CFR 195.413(c)(2) and 195.413(c)(3) for an exposed underwater pipeline segment in the Key West, Florida area. The regulations require a hazardous liquid pipeline operator to place a marker above the center of an exposed underwater pipeline segment that is less than 200 yards long in accordance with 33 CFR part 64 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 operator must complete the burial of the pipeline within six months after discovery of the exposed pipe, or no later than November 1 of the following year if the six month period is later than November 1 of the year of discovery.

*Pipeline System Affected:* This special permit covers 200 feet of exposed pipe on a four mile underwater pipeline segment that runs from the Trumbo Point Naval Annex of the Key West Naval Air Station, Key West, Florida to Stock Island, Florida. The exposed segment lies in the Fleming Channel immediately adjacent to the Trumbo Point Naval Annex. Both sides of the Fleming Channel, near the exposed pipeline, are bordered by annexes of the Key West Naval Air Station. The four mile underwater pipeline segment is the western portion of the 7.1-mile, 4-inch KWPC pipeline, which transports JP5 jet fuel from KWPC's Bulk Storage and Transfer Facility on Key West to the U.S. Navy's bulk fuel storage facility on Boca Chita Key, Florida. The *special permit segment* is defined as 200 feet of the KWPC pipeline from station 0+00 to station 2+00 as shown in Figure 4 of the KWPC special permit request dated January 10, 2006.

#### Public Notice

On October 16, 2006, PHMSA posted notice of the KWPC request in the **Federal Register** (71 FR 60794) inviting interested persons to comment on the request. On February 8, 2007, PHMSA posted another notice in the **Federal Register** (72 FR 6042) informing the public that we have changed the name granting a waiver to a special permit. We did not receive any comments for or against this special permit request as a result of this notice. The special permit request, **Federal Register** notice and all other pertinent documents are available for review by the public in Docket Number PHMSA-2006-25026 in the Federal Docket Management System located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

#### Special Permit Analysis

*Background:* In response to the Offshore Pipelines Navigation Hazards Act, Public Law 101-599, the Federal pipeline safety regulations in 49 CFR Part 195 were amended on November 27, 1991, to require an inspection of underwater pipelines in the *Gulf of Mexico and its inlets* to be completed before November 16, 1992. Amendment 195-47 defined the *Gulf of Mexico and its inlets* to mean the waters from the mean high-water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes and canals) seaward to include the territorial sea and Outer Continental Shelf (OCS) to a depth of 15 feet, as measured from the mean low water.

If during an inspection, an operator discovered a pipeline it operates was an *exposed underwater pipeline* or constituted a *hazard to navigation*, the operator was required to promptly notify the National Response Center, mark the pipeline within 7 days, and rebury the pipe 36 inches below the seabed for normal excavation or 18 inches below the seabed for rock excavation. The amendment defined *exposed underwater pipeline* to mean a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water. It defined a *hazard to navigation* to mean a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

To gain further information on the risks posed by underwater pipelines, the DOT's Office of Pipeline Safety (OPS) [now PHMSA] and the Department of Interior's, Minerals Management Service, requested the Marine Board,

Commission on Engineering and Technical Systems, National Research Council conduct an interdisciplinary review and assessment of the many technical, regulatory and jurisdictional issues that affect the safety of marine pipelines in the offshore waters of the United States. The National Research Council appointed the Committee on the Safety of Marine Pipelines (Committee), under the auspices of the Marine Board, to undertake the task. The Committee studied the Gulf of Mexico where about 99 percent of the marine pipeline mileage is located.

According to the Committee's 1994 report, the Committee found the marine pipeline network does not present an extraordinary threat to human life and that pipeline accidents involving deaths or injuries were rare. The Committee also found the most widespread risks posed by pipelines are oil pollution, mainly due to pipeline damage caused by vessels and their gear, and impacts from anchors, nets, trawl boards and hulls of cargo, fishing, and service vessels and mobile drilling rigs account for most of the injuries, deaths, property damage, and pollution. For example, the report notes that anchor damage alone accounted for 90 percent of the pipeline-related pollution on the OCS of the Gulf of Mexico. Moreover, the report states that very few incidents produced most of the oil pollution from pipelines. That is, the largest 11 pipeline spills caused by vessels accounted for 98 percent of the pollution from pipelines. The Committee's report concluded the risks generally can be managed with available technology and without major new regulations if enforcement of current regulations is improved.

The Committee recommended that operators inspect the depth of burial of underwater pipelines at intervals determined by analysis of the probabilities of risks. High risk areas are zones of high density of pipelines; high density of vessel traffic; shallow waters; the immediate vicinity of platforms; areas of severe erosion or shift of the sea floor and high potential for flooding; and areas affected by hurricanes or severe storms. According to the Committee report, operators should schedule surveys of pipelines using the relatively predictable behavior of sediment and shoreline erosion and after the passage of major storms.

On July 29, 2004, 49 CFR part 195 was amended (Amendment 195-82) with additional underwater inspection requirements. The new and current regulations require operators to prepare and follow a procedure to identify pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet deep

(as measured from mean low water) that are at risk of being *exposed underwater pipelines or hazards to navigation*. The regulations also require each operator to conduct periodic underwater inspections of its pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet deep based on the identified risk. In lieu of reburial of the discovered underwater exposed or hazard to navigation pipeline, the regulations now allow an operator to employ engineered alternatives that meet or exceed the level of protection provided by burial.

*Pipeline Marker Analysis:* In its special permit petition submittals, KWPC asserted that a pipeline marker placed over the center of the KWPC exposed underwater pipeline segment in accordance with 49 CFR 195.413(c)(2) would pose a hazard to navigation in Fleming Channel. Therefore, KWPC proposed an alternate marking method to include a marker on the shorelines of both Key West and Fleming Key as well as an additional marker on the west side of the nearby road bridge linking Key West to Fleming Key.

KWPC included with its submittals to PHMSA a letter from the USCG dated September 6, 2005, which approved an alternate marking method. However, the USCG letter did not address KWPC's claim that a marker placed in the channel above the center of the exposed underwater pipeline segment would create a hazard in the channel. Therefore, PHMSA sought and received additional information on this issue. This information includes a *Special Purpose Survey* signed and certified on October 2, 2007, by a professional land surveyor registered in the state of Florida. The survey provided the coordinates of the end points and center of the exposed underwater pipeline segment. PHMSA forwarded these coordinates via e-mail to the USCG for evaluation. In a return letter to PHMSA dated November 26, 2007, the USCG stated a "pipeline crossing sign above the center of the exposed pipeline is considered a hazard to navigation for vessels transiting Fleming Cut in that area" and recommended that a standard "Danger Pipeline Crossing" sign be placed on the south side of Fleming Key Cut. KWPC's alternate marking method includes the USCG recommended sign and two other signs: One on the north side of Fleming Key Cut and one on the nearby road bridge linking Key West to Fleming Key.

*Hazard to Navigation Analysis:* A review of the legislative and rulemaking histories relative to inspecting underwater pipelines reveals the Offshore Pipelines Navigation Hazards

Act, Public Law 101-599 and subsequent rulemaking by DOT were intended to protect the public from the hazards associated with pipeline damage caused primarily by commercial fishing vessels in the shallow waters of the northern Gulf of Mexico. Congress passed the law in response to two fatal accidents in the late 1980s in the Gulf of Mexico near the Texas and Louisiana coastlines. The DOT subsequently published regulations in response to the law and to meet its mandate to protect the public and the environment from the risks posed by underwater natural gas and hazardous liquid pipelines.

A review of the legislative and rulemaking histories also reveals there was considerable debate about what did, or did not, constitute a *hazard to navigation*. While the underwater exposed KWPC pipeline segment meets the regulatory definition of a *hazard to navigation*, there is considerable support for concluding that no actual hazard to navigation exists. This support includes the following facts provided by KWPC:

(1) The exposed underwater pipeline segment is located hundreds of miles from the primary area of concern, the northern Gulf of Mexico and its inlets.

(2) Commercial fishing vessels of the type used in the northern Gulf of Mexico do not operate in the area of the exposed underwater pipeline segment.

(3) The exposed underwater pipeline segment is in Fleming Channel, which is only used by pleasure boats seeking access to Key West Harbor from Garrison Bright and the Key West Yacht Club.

(4) Shallow waters in the Fleming Channel (11 feet) and surrounding waters limit the transit traffic in the channel to vessels with drafts less than 6.5 feet, allowing for a minimum clearance of 4.5 feet above the exposed underwater pipeline segment.

(5) Navigational charts for the Key West Harbor show the maximum clearance beneath the road bridge linking Key West with Fleming Key is 18 feet. This low bridge clearance restricts the size of vessels able to enter Fleming Channel near the exposed underwater pipeline segment.

(6) Navigational charts for Key West Harbor show the exposed underwater pipeline within a restricted, no anchorage area, under U.S. Army Corps of Engineers regulation 33 CFR 334.610, Danger Zone and Restricted Area Regulations.

(7) Both sides of Fleming Channel, near the exposed pipeline, are part of military annexes belonging to the Key West Naval Air Station. The naval air station has regulations prohibiting

anchorage within the vicinity of the exposed underwater pipeline.

A letter to KWPC of November 29, 2005, signed by the Chief, Prevention Division, Seventh Coast Guard District, USCG states:

“The pipeline is submerged in a shallow area that is transited solely by recreational vessels and surrounding waters restrict the size of vessels that can transit the Fleming Key Cut. Due to the surrounding water depths, vessels would run aground before contacting the pipeline. Furthermore, covering the pipeline with the appropriate amount of fill would reduce water depth further. Based on the above factors, I have determined the exposed section of pipeline does not pose danger to navigation that requires USCG action under existing statutory authorities.”

### Special Permit Findings

PHMSA finds that granting this special permit is not inconsistent with pipeline safety and will provide a level of safety equal to or greater than reburial of the exposed underwater pipeline segment. We do so because the special permit analysis shows the following:

(1) The alternate pipeline marking method proposed by KWPC, and agreed to by the USCG, will provide for three pipeline markers in lieu of one pipeline marker and will provide adequate warning to passing boats in Fleming Channel.

(2) The alternate pipeline marking method proposed by KWPC, and agreed to by the USCG, will avoid the navigational hazard that would be created by placing a single marker above the center of the exposed underwater pipeline segment.

(3) The underwater exposed pipeline segment is in a shallow channel where it is unlikely to be struck by a commercial fishing vessel or gear from a commercial fishing vessel.

(4) The underwater exposed pipeline segment is in a shallow channel restricted area where the U.S. Navy enforces a prohibition against anchoring.

(5) The USCG states the surrounding water depths would cause vessels to run aground before contacting the underwater exposed pipeline segment.

(6) PHMSA is granting this special permit subject to conditions and limitations to ensure KWPC employs an alternate marking method to provide a level of safety equal to or greater than a marker placed above the center of the exposed underwater pipeline segment.

(7) PHMSA is granting this special permit subject to conditions and limitations to ensure KWPC employs alternative actions to provide a level of safety equal to or greater than reburial

of the exposed underwater pipeline segment.

### Special Permit Grant

PHMSA grants a special permit of compliance from 49 CFR 195.413(c)(2) and 95.413(c)(3) to KWPC for 200 feet of the KWPC pipeline from station 0+00 to station 2+00 as shown in Figure 4 of the KWPC special permit request dated January 10, 2006.

### Special Permit Conditions

PHMSA grants this special permit with the following conditions:

(1) KWPC will place signs on the shoreline of Key West and Fleming Key, immediately adjacent to the exposed underwater pipeline segment with the following information:

WARNING Restricted Area Transit Only No Stopping or Anchoring Within 100 Yards of Shore Underwater Utility 33 CFR 334.610

(2) KWPC will place a similar sign on the west side of the road bridge linking Key West to Fleming Key.

(3) In addition to the 5-year inspections performed under KWPC's procedures for inspections of underwater segments in the Gulf of Mexico in waters less than 15 feet deep, KWPC will inspect the exposed underwater pipeline segment on an annual basis to confirm that there has been no material change in the condition of the exposed underwater pipeline segment.

(4) KWPC will notify the Director, PHMSA Southern Region within 30 days, in writing, of any

a. material change in condition of the exposed underwater pipeline segment found during any annual or 5-year inspection;

b. any reportable or non-reportable leaks or incidents on the KWPC pipeline, which impact the exposed underwater pipeline segment; and

c. mergers, acquisitions, transfer of assets or other events affecting the regulatory responsibility of the company operating the KWPC pipeline.

### Special Permit Limitations

PHMSA has the sole authority to make all determinations on whether KWPC has complied with the specified conditions. Should KWPC fail to comply with any conditions of this special permit, or should PHMSA determine this special permit is no longer appropriate or that this special permit is inconsistent with pipeline safety, PHMSA may revoke this special permit and require KWPC to comply with the regulatory requirements of 49 CFR 195.413(c)(2) and 195.413(c)(3).

**Authority:** 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC on February 6, 2008.

**Jeffrey D. Wiese,**

*Associate Administrator for Pipeline Safety.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35095]

### The Alaska Railroad Corporation— Petition for Exemption To Construct and Operate a Rail Line Extension to Port MacKenzie, AK

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement; Notice of Availability of the Draft Scope of Study for the Environmental Impact Statement; Notice of Scoping Meetings; and Request for Comments on Draft Scope.

**SUMMARY:** The Alaska Railroad Corporation (ARRC) plans to file a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority to construct and operate approximately 30 to 45 miles of new rail line connecting the Matanuska-Susitna Borough's Port MacKenzie (or Port) in south-central Alaska to a point on the ARRC main line between Wasilla and north of Willow, Alaska. The proposed Port MacKenzie Rail Extension (or Project) would provide freight services between the Port and Interior Alaska and would support the Port's continuing development as an intermodal and bulk material resources export and import facility. The Port is owned by the Matanuska-Susitna Borough (MSB) and MSB is a co-sponsor of the Project. Because the construction and operation of this Project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). The purpose of this Notice of Intent is to notify individuals and agencies interested in or affected by the proposed Project of the decision to prepare an EIS. SEA will hold public scoping meetings as part of the NEPA process associated with the development of the EIS. Additionally, as part of the scoping process, SEA has developed a draft Scope of Study for the