



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

FEB 27 2006

Ms. Patricia E. Lin
Counsel, Environmental Practice Group
Chevron U.S.A. Inc.
1500 Louisiana Street
Houston, TX 77002

Ref. No. 05-0313

Dear Ms. Lin:

This is in response to your November 23, 2005 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if temporary storage of a railroad car containing hazardous material on a leased railroad spur is considered to be "in transportation." In addition, you ask if the shipper or carrier is financially responsible for any release during transportation. Your question pertains to the following scenario:

A shipper consigns a shipment of a Class 3 (Flammable liquid) material from a vendor's facility in Alabama to its processing plant in Mississippi. Initially, the shipment is carried in trucks via public highway to a private rail yard. The shipment is then transloaded from the trucks to a railcar. The railcar is stored on a leased railroad spur for a period of 1-3 days before it is picked up by the rail carrier and transported to its final destination.

In the scenario you describe in your November 23 letter, the storage of the hazardous material in a railcar located on a leased railroad spur is considered to be "in transportation" for purposes of the HMR. See § 171.1(c). Specifically, in the scenario you describe, the storage of the material at the rail yard is "storage incidental to movement" and subject to all applicable HMR requirements. The HMR define "storage incidental to movement" to include "storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it in commerce until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium." See § 171.8. Storage incidental to movement also includes storage at a transloading facility. See §171.1(c)(4).

Financial responsibility for a release of hazardous material during transportation is not regulated by the HMR. However, federal law does provide for civil and criminal



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penalties when a person is found to have knowingly and/or willfully violated the HMR or federal hazardous materials transportation law. See 49 U.S.C. §§ 5123 and 5124.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale". The signature is fluid and cursive, with the first name "John" being the most prominent.

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



Eichenlaub
§174.67
Tank Car Unloading
05-0313

Patricia E. Lin
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November 23, 2005

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
400 7th Street S.W.
Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

On November 10, I called the Hazardous Materials Information Center for assistance in applying the Hazardous Materials Regulations (HMR) to a shipping process that my client, Chevron Technology Ventures, LLC (CTV), is seeking to implement. CTV needs to move class 3 bulk feedstock oils from a vendor's facility in Alabama to its processing plant in Mississippi. Currently, the contemplated shipping method is for the vendor to transport truckloads of the oil from its facility, via public highway, to a private railyard where Chevron will lease an unused railroad spur and keep a DOT-compliant rail car. The vendor will transload the oils from its trucks to the rail car and then notifies a rail carrier for pickup. The rail carrier has indicated that it should be able to pick up the loaded rail car within 24 hours of notification, but given the rural location of the railyard, it could take up to 3 days for pick-up. The vendor expects to make 12 to 14 such shipments to CTV each year, and each shipment will be manifested with the Mississippi processing plant as the final destination. The feedstock vendor will be responsible for reporting and responding to any spill or release that might occur while the loaded rail cars are still at the railyard, but CTV will be contractually required to reimburse the vendor for the cost of any such reporting or response.

Mr. Kurt Eichenlaub answered my call to the Hazardous Materials Information Center and agreed that all phases of this shipping method -- trucking, transloading, storage at the railyard while awaiting pickup by the rail carrier, and rail carriage -- qualify as "transportation" under the HMR and the guidance provided in HM-223. Additionally, he indicated that CTV's financial liability for any releases that occur after transloading while the railcars are awaiting pickup by the rail carrier, Chevron's lease of the railroad spur where the transloading will occur, and Chevron's ownership of the rail cars have no bearing on the fact that the oil shipments are "in transit" while they are at the railyard.

CTV and Chevron wish to comply with all regulations that will govern this shipping method. We appreciate Mr. Eichenlaub's verbal interpretation of the DOT's HMR. However, in order to move forward with the project, we feel it would be helpful to obtain written confirmation of his interpretation of the regulations, especially regarding the effect, if any, of the contractual allocation of financial responsibility for any losses that may occur in transit.

Thank you for your assistance. If you have any questions, please contact me at (832) 854-6427.

Sincerely,

Patricia E. Lin signed by permission

Patricia E. Lin

Eichenlaub, Kurt <PHMSA>

From: Henriksen, Lucinda <FRA>
Sent: Tuesday, February 14, 2006 9:58 AM
To: Eichenlaub, Kurt <PHMSA>
Cc: Solomey, Joe <PHMSA>; Schoonover, William <FRA>; Taber, Albert <FRA>; Phemister, Thomas <FRA>
Subject: RE: Interpretation Letter Concurrence

Kurt,

Bill Schoonover forwarded your message below to me. In response, attached please find FRA's comments to PHMSA's letter of interpretation 05-0313 addressed to Chevron, U.S.A. Inc. (I've attached a redlined document which is marked to show our suggested revisions, as well as a clean copy). Thanks for the opportunity to comment.

-Lucinda Henriksen
FRA, Office of Chief Counsel
(202) 493-1345

From: Eichenlaub, Kurt <PHMSA>
Sent: Tuesday, January 17, 2006 2:06 PM
To: Schoonover, William
Subject: Interpretation Letter Concurrence

Mr. Schoonover,

Please review the attached letter of interpretation and respond with FRA concurrence/comment. Thanks for your help.

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