



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

SEP 03 2008

Mr. Timothy W. Wiseman
Scopelitis, Garvin, Light, Hanson & Feary
Attorneys At Law
10 W. Market Street, Suite 1500
Indianapolis, IN 46204

Ref. No. 08-0176

Dear Mr. Wiseman:

This is in response to your July 2, 2008 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to incident reporting requirements. In your letter, you state that your firm represents a retailer engaged in the transportation, warehousing, and distribution of merchandise.

According to your letter and a conversation with a member of my staff, Glenn Foster, the retail locations are held and operated in the name of one legal entity (Entity A). The motor carrier transporting goods under an operating authority issued by the Federal Motor Carrier Safety Administration (FMCSA) is held and operated in the name of a second legal entity (Entity B). The entity providing warehousing and distribution services is held and operated under a third legal entity (Entity C). The parent company of the three entities is the same. The majority of merchandise transported is either non-hazardous or meets the requirements for consumer commodities shipments.

In your letter, you ask whether Entity C, the warehousing company, is required to submit a Hazardous Materials Incident Report (DOT Form F 5800.1) when it receives a trailer containing undeclared hazardous materials from Entity A, the retailer, and being transported by Entity B, the motor carrier. You also ask whether the response to this scenario changes if Entity B, the motor carrier, has delivered the trailer and departed the premises of Entity C. You further ask whether the response to these scenarios changes because the parent company of the three entities is the same.

As required in § 171.16, each person in physical possession of a hazardous material at the time of an incident specified in § 171.16 occurs during transportation (including loading, unloading, and temporary storage) must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 (01/2004) within 30 days of discovery of the incident. The incidents in § 171.16 include the discovery of an undeclared hazardous material during transportation. As defined in § 171.8, "transportation" means the movement of property and loading, unloading, or storage incidental to that movement. Section 171.8 also defines "storage incidental to movement" to mean 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, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it in commerce until the driver relinquishes possession of the package at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package.

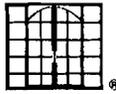
Based on the information you provided in your first scenario, Entity C, the warehousing company discovered an undeclared hazardous material during "transportation," and, therefore, is required to submit a Hazardous Materials Incident Report (DOT Form F 5800.1) within 30 days of discovery of the incident. Under your second scenario, because Entity B, the motor carrier, has delivered the trailer and departed the premises of Entity C, the shipment is no longer in "transportation," and a Hazardous Materials Incident Report is not required to be submitted by Entity B. The response to both scenarios is not affected because the parent company of the three entities is the same

I hope this information is helpful.

Sincerely,



Susan Gorsky,
Acting Chief, Standards Development
Office of Hazardous Materials Standards



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Foster
3171.16
Incident Report
08-0176

July 2, 2008

Mr. Edward T. Mazzullo
Office of Hazardous Material Standards
Pipeline & Hazardous Material Safety Adm.
Suite E26, East Building, 2nd Floor
U.S. Department of Transportation
1200 new Jersey Ave., SE
Washington, DC 20590-0001

Re: Interpretation of 49 C.F.R. § 171.16
PHMSA Case No.: 08-0058-CAR-CE

Dear Mr. Mazzullo:

This Firm represents a retailer which is engaged, inter alia, in the transportation, warehousing and distribution of merchandise. The company's corporate structure is set up as follows:

The retail locations are held and operated in the name of one legal entity ("Entity A"); the motor carrier transporting the goods under operating authority issued by the Federal Motor Carrier Safety Administration ("FMCSA") is held and operated in the name of a different legal entity ("Entity B"); and, finally, the entity providing warehousing and distribution services is held and operated in yet a different legal entity ("Entity C"). The ultimate parent of each of these three entities is the same. The vast majority of the merchandise transported is not hazardous or qualifies as a consumer commodity.

The purpose of this letter is to seek guidance from the Pipeline and Hazardous Material Safety Administration ("PHMSA") on whether there would be an obligation to file a hazardous material incident report (DOT Form F5800.1) under 49 C.F.R. § 171.16 when undisclosed hazardous material is discovered under the following scenarios. For example, would Entity C, the warehousing company, have an obligation to file an incident report when it receives a trailer

from Entity A, the retailer, containing undisclosed hazardous material that was delivered by Entity B, the motor carrier? Would the answer to that question change if the driver for Entity B had dropped the trailer at Entity C's facility and departed?

Based upon prior interpretations issued by the PHMSA related to § 171.16, it appears as though a consignee is not required to submit an incident report if it identifies undisclosed hazardous material on a delivered shipment after the motor carrier has departed the consignee's facility. However, my client was uncertain as to whether the fact that each of its three corporate legal entities are owned by the same parent in any way changes this prior interpretation.

If you have any questions or need any further information to process this request for interpretation, please do not hesitate to contact me. I look forward to receiving your response at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. W. Wiseman', with a horizontal line extending to the right.

Timothy W. Wiseman

TWW/kkc