



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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

OCT 08 2009

Mr. Jon Bjornstad  
President  
C & N Companies  
8011 34<sup>th</sup> Ave., S Suite 147  
Bloomington, MN 55425

Ref. No. 09-0064

Dear Mr. Bjornstad:

This is in response to your request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) regarding an offeror's responsibility for preparing hazardous materials for transportation.

According to your letter, your company contracts with ethanol manufacturers to manage the sale of the ethanol for the manufacturer. The contracts specify that the manufacturer will "supervise the loading and delivery of Ethanol, prepare delivery documentation and generally be responsible for all matters ancillary to such activities." The rail tank cars are loaded by the manufacturer, closed by the manufacturer, and sealed by the manufacturer. The manufacturer provides C&N with information stating the amount of ethanol loaded into the tank car and provides a loading checklist signed by the loader, indicating that the car has been inspected and conforms to § 173.31(d)(1) of the HMR. Your questions are paraphrased and answered below.

Q1. Is C&N Companies (C&N) considered the agent of the manufacturer (or previous offeror) under § 172.204(d)(1) and if so, may C&N list the manufacturer as the shipper and sign the shipper's certification?

A1. For purposes of the HMR, an "offeror" is any person who performs or is responsible for performing a pre-transportation function required under the HMR for transportation of a hazardous material in commerce or who tenders or makes the hazardous material available to a carrier for transportation in commerce (see § 171.8). There may be more than one offeror for a shipment of hazardous materials. Under the scenario described in your letter, C&N and the ethanol manufacturer are both offerors of the ethanol shipment and are responsible for the specific pre-transportation functions each performs (see § 171.1(b) for the definition of "pre-transportation function"). C&N, acting as the agent of the manufacturer, is considered an offeror and may sign the certification statement on the shipping paper. In so doing, C&N takes

responsibility for performing that function. In order to properly certify a shipment, the person signing the certification must have direct knowledge that the materials are in proper condition for transportation and are properly classified, described, packaged, marked and labeled in accordance with the HMR and applicable international regulations.

Q2. May C&N rely on information provided by the manufacturer (or previous offeror) and in good faith rely on that information when signing the certification statement and does “direct knowledge” include information passed on from the manufacturer?

A2. Yes. An offeror may rely on information provided by another offeror and consider it direct knowledge, unless that offeror knows or a reasonable person acting in the circumstances and exercising reasonable care would know, that the information provided is incorrect.

Q3. Is this a situation whereby each offeror is responsible for only those functions performed?

A3. Yes. Each offeror is responsible only for the specific pre-transportation or transportation functions that it performs or is required to perform. Also see A1 and A2.

Q4. How would regulatory compliance be determined when a tank car is in violation of § 173.31(d)(1)(iv) with respect to ensuring that all closures and fastenings are properly tightened?

A4. The determination of compliance is based on various factors, such as signs of leakage around the closures of fastenings or individually testing the closures and fasteners. The determination would also consider applicable instructions from the manufacturer and may also include information obtained from the hazardous materials employee(s) who actually tightened the closures and fastenings. Generally, such determinations are made on a case-by-case basis and are dependent on the facts of the specific situation.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Mitchell', with a long horizontal flourish extending to the right.

Hattie L. Mitchell  
Chief, Regulatory Review and Reinvention  
Office of Hazardous Materials Standards

March 4, 2009

Mr. Edward T. Mazzullo  
Director, Office of Hazardous Materials Standards  
U.S. DOT/PHMSA (PHH-10)  
1200 New Jersey Avenue, SE East Building, 2nd Floor  
Washington, DC 20590

Dear Mr. Mazzullo,

This request for formal interpretation is being sent at the suggestion of an inspector for your office; this request is without prejudice to the position of C&N Companies in pending violation proceedings.

C&N Ethanol Marketing Corp. is a marketer of Ethanol, and our company engages with manufacturers, through Ethanol Purchase and Marketing Agreements, to act as the selling agent for ethanol produced by these certain manufacturers.

The relation between the two parties is created by express contract. In this contract, the manufacturer delegates the transaction of its sales to C&N, giving C&N more or less discretionary power to undertake and manage all sales of ethanol. C&N then renders to the manufacturer an account of such sales, along with net sales proceeds less commission.

These contracts stipulate the manufacturer's responsibilities as far as loading railroad tank cars of ethanol. The contract reads: "Manufacturer shall supervise the loading and delivery of Ethanol, prepare delivery documentation, and generally be responsible for all matters ancillary to such activities."

In day to day performance of the contract, the rail tank cars are loaded by the manufacturer, closed by the manufacturer, and sealed by the manufacturer. The manufacturer provides C&N with information stating the amount of gallons within the car. The manufacturer also provides a loading checklist signed by the loader, indicating that the car has been inspected and conforms to 49CFR 173.31(d)(1).

C&N then provides rail carriers with bills of lading, naming the Manufacturer as Shipper, and C&N as the Origin Party.

C&N is requesting the following interpretations:

- (1) Under 49 CFR 172.204 (d)(1), is C&N considered the agent of the manufacturer? If so, can C&N list the manufacturer as the shipper of the tank car, and sign the shippers' certification with the name of a C&N employee? Also, does the documentation that C&N receives from its manufacturer as to conformance with 49 CFR 173.31(d)(1) constitute "direct knowledge" as required under PHMSA Interpretation #098-0135?
- (2) With observance of PHMSA Interpretation #04-0183, and under the guidance PHMSA-04-19173 (HM-223A) as published in the Federal Register of July 28, 2005 (Volume 70, Number

McIntyre  
§173.31  
§172.204(d)(1)  
Tank Cars  
09-0064



March 19, 2009

144, Pages 43638-43644) we wish to ask an additional question. If a tank car is found to be not complying with 49 CFR 173.31(d)(1)(iv), (closure eyebolts loose) how would regulatory liability be determined?

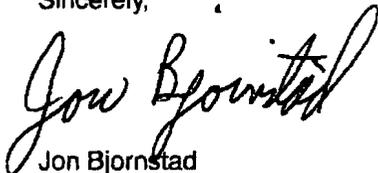
Specifically,

(A) Is this a situation where there is more than one offeror of a hazardous material, and where each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform?

(B) If so, then, is C&N relying on the information provided by the previous offeror, (the manufacturer), and can C&N use such information in good faith, and in good faith sign the Shippers Certification with the signature of C&N?

C&N is responsible for the proper preparation of the Hazardous Bill of Lading, and therefore has interest in properly handling its duties as required under 49 CFR Part 172 Subpart 3 (shipping papers). If you require any of the cited documents for a complete review of our situation, please let us know.

Sincerely,



Jon Bjornstad  
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C&N Companies  
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