



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

MAR 23 2010

Mr. John E. Clark
Program Manager, Hazardous Materials
Environmental Health and Safety Program Support
The Metropolitan Water District of Southern California
PO Box 54153
Los Angeles, California 90054-0153

Ref. No. 09-0270

Dear Mr. Clark:

This is in response to your October 28, 2009 letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to unloading operations involving cargo tanks and rail tank cars. Specifically, you ask whether employees who handle various functions related to cargo tank and rail tank unloading operations meet the definition of a "hazardous material employee" under § 171.8 and are thus subject to the training requirements of Part 172, Subpart H.

According to your letter, your facility receives and unloads hazardous materials in cargo tank and rail tank cars. Cargo tank unloading operations are handled by the cargo tank driver, under the supervision of a facility employee. The facility employee checks paperwork, inspects the cargo tank to ensure there are no leaks, directs the cargo tank driver to the appropriate storage tank, checks the unloading lines and valves, and monitors the actual unloading as it is performed by the cargo tank driver. Rail tank car unloading operations are handled by a facility employee after railroad personnel detach the car from the train and depart the facility.

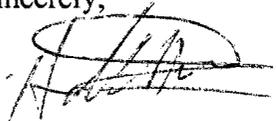
Requirements in the HMR apply to transportation of a hazardous material in commerce and each person who transports a hazardous material in commerce. See § 171.1(c). For purposes of the HMR, "transportation" means the movement of property and loading, unloading, and storage incidental to that movement. "Unloading incidental to movement" means removing a packaged or containerized hazardous material from a transport vehicle or emptying a hazardous material from a bulk packaging after the hazardous material has been delivered to its destination when the unloading operation is performed by carrier personnel or in the presence of carrier personnel. A "hazmat employee" is a person employed on a full-time, part-time, or temporary basis who in the course of such employment directly affects hazardous materials transportation safety. (See § 171.8 for the definitions of "transportation," "unloading incidental to movement," and "hazmat employee.")

The unloading operations involving cargo tanks that are described in your letter meet the definition of "unloading incidental to movement," and, thus, are regulated as transportation functions under the HMR. The employees responsible for overseeing the cargo tank unloading operations are hazmat employees and must be trained in accordance with Subpart H of Part 172.

The unloading operations involving rail tank cars that are described in your letter do not meet the definition of "unloading incidental to movement," and, thus, are not regulated as transportation functions under the HMR. The employees responsible for performing rail tank car unloading operations are not hazmat employees and are not subject to the transportation requirements in Subpart H of Part 172. However, these employees may be subject to the training requirements of other Federal agencies (e.g., OSHA) as well as State and local governments.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell", written over a horizontal line.

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



THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of the General Manager

Andrews
§ 171.1
§ 172.700
Training
09-0270

October 28, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

To Whom It May Concern:

Request for USDOT Opinion on Hazardous Materials Training Requirement

We are requesting a written opinion from the US Department of Transportation (USDOT) regarding the status of the Metropolitan Water District (Metropolitan) employees who receive bulk chemical shipments (USDOT regulated hazardous materials) at our facilities.

Specifically, we would like to know if: (a.) because of their activities related to receiving these chemicals, such employees need to be classified as "hazmat employees" under 49CFR 171.8; and (b.) because of these same activities, these employees are required to have training under 49CFR 172, Subpart H.

Bulk chemicals are delivered to our facilities by a vendor or third-party driver in vendor-supplied cargo tanks or by the railroad in vendor-supplied rail cars (tank cars). The vendor or third-party driver unloads the cargo tank chemicals and designated Metropolitan personnel unload the rail car chemicals from Metropolitan's private tracks, after the locomotive has been detached and left the facility.

We have received conflicting opinions from hazmat transportation consultants about whether the chemical receiving-related duties of these Metropolitan employees would make them subject to USDOT hazmat training. Recently, we contacted the USDOT Information Center and described the chemical receiving duties of these employees at length. The Information Center technician stated that, based on our description of the employees' duties, no training would be required under Subpart H.

Delivery and Unloading of Chemicals by Cargo Tank:

The following describes the duties of designated Metropolitan employees in coordinating the delivery and unloading of chemicals by cargo tank.

Arrival

Upon arrival of the vendor's chemical cargo tank at a facility, the designated Metropolitan employee initially performs the following actions:

1. After a security screening by the contract security guard at the facility gate, the designated Metropolitan employee:
 - a) verifies the chemical to be delivered is correct;
 - b) checks the driver's paperwork, checks security seals are intact and numbers on seals correspond to paperwork;
 - c) conducts a visual inspection of all visible portions of the cargo tank to ensure that there are no leaks;
2. The Metropolitan employee then escorts the vendor cargo tank to the appropriate chemical unloading area.

Unloading

The unloading of each delivery is conducted by the vendor's driver, but is monitored during the unloading operation by the designated Metropolitan employee, who ensures that:

1. Appropriate PPE is worn by all parties during the unloading procedure;
2. The chemical is being loaded into the correct storage tank and the feed line valves are in proper alignment;
3. The vendor's cargo tank is properly positioned within the unloading area;
4. The vendor's driver provides a product sample in Metropolitan's labeled sample bottle;
5. The vendor's driver follows appropriate unloading procedures.

Upon completion of vendor unloading, the designated Metropolitan employee ensures that:

6. All valves and physical connections at the unloading site are inspected for leaks and proper positioning;
7. All discharge connections and hose ends are plugged, capped, blind-flanged, and contained within an appropriate cover as necessary to prevent any leakage or spillage;
8. Appropriate delivery paperwork is received from vendor's driver, signed by designated Metropolitan employee and Metropolitan's copy is retained;
9. After conducting a final inspection of the cargo tank for leaks, the cargo tank is escorted back to the facility gate.

Delivery and Unloading of Chemicals by Rail (Tank) Car:

The following describes the duties of designated Metropolitan employees in coordinating the delivery and unloading of vendor chemicals by rail car.

Arrival

Upon arrival of the vendor's rail (tank) car at a facility, the railroad personnel locate the car(s) at a prearranged on-site staging location on Metropolitan's private track. The designated Metropolitan employee then performs the following actions:

1. Conducts a visual inspection of the rail car to determine if placards indicate the correct authorized chemicals, security seal numbers on the car match those provided on the shipping paperwork, the seals have not been broken and there are no leaks from the car;
2. If the placards, seals or paperwork indicate unauthorized chemicals, or if the rail car appears to be leaking, the designated Metropolitan employee immediately notifies plant control room personnel, who take appropriate action to have the unauthorized chemicals rejected or the leak stopped;
3. If everything is in order with the rail car, the designated Metropolitan employee receives delivery paperwork from railroad personnel, signs it and retains Metropolitan's copy; and
4. Railroad personnel then detach the car from the train and leave the facility.

Unloading

1. When railroad personnel have left the plant premises, designated Metropolitan employees may need to move the rail car to its proper unloading position using a track-mobile.
2. After repositioning the rail (tank) car, designated Metropolitan employees are responsible for connecting the rail car to the proper tank and unloading the rail car.

Based on our review of the DOT hazmat regulations, available opinion letters and our knowledge of the operation, we believe the designated Metropolitan employees receiving these bulk chemical shipments do not perform any hazmat function subject to the regulations. The cargo tank unloading requirements are carried out by the vendor's driver and the rail (tank) car unloading is carried out by Metropolitan employees on Metropolitan's private track, after the locomotive has been detached and after railroad personnel have left the facility premises.

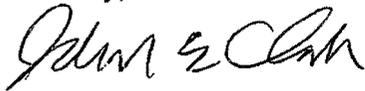
We request your office review the designated Metropolitan employee duties and render an opinion regarding (a.) whether such employees should be classified as hazmat employees or not and (b.) the training requirement applicability.

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If it is determined the designated Metropolitan employee is a hazmat employee, please describe the duty or duties which subject the employee to the training requirement as we may wish to modify or exclude those duties.

If you have any questions please contact me at (213) 217-5504 or via e-mail at jclark@mwdh2o.com

Sincerely,

A handwritten signature in black ink that reads "John E. Clark". The signature is written in a cursive, slightly slanted style.

John E. Clark
Program Manager, Hazardous Materials
Environmental Health and Safety Program Support

PGB:dm

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