National Transportation Safety Board

Washington, D.C. 20594

Office of the Chairman

APR 03 2007

Honorable Thomas J. Barrett
Administrator
Pipeline and Hazardous Materials Safety
Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Admiral Barrett:

Thank you for the January 25, 2006, response to the National Transportation Safety Board regarding Safety Recommendations I-02-1 and -2, stated below. These recommendations were issued to the Research and Special Programs Administration (RSPA, whose hazardous materials safety responsibilities now belong to the Pipeline and Hazardous Materials Safety Administration [PHMSA]) on June 29, 2000, as a result of a hazardous materials accident in Riverview, Michigan. In that accident, a pipe attached to the unloading line of a railroad tank car fractured and separated, causing a release of flammable and poisonous gas that in turn caused a fire and the release of a second poisonous gas. These events caused the death of three plant employees and injuries to several others, and necessitated the evacuation of about 2,000 residents.

I-02-1

> Develop, with the assistance of the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA), safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.

I-02-2

> Implement, after the adoption of safety requirements developed in response to Safety Recommendation I-02-1, an oversight program to ensure compliance with these requirements.

Until recently, PHMSA's position has been that the hazardous materials regulations currently in force (49 *Code of Federal Regulations* [CFR] 171-180,) in conjunction with OSHA and EPA standards and regulations, were sufficient to address the issues that prompted these recommendations. The regulations cited above place the responsibility for loading and unloading hazardous materials with the motor carrier or the facility at which the loading and unloading is conducted. Your January 2006 letter detailed the reasons why PHMSA believed that additional rulemaking was not warranted.

On December 28, 2006, Mr. Bob Chipkevich, Director of the Safety Board's Office of Railroad, Pipeline, and Hazardous Materials Safety, gave a presentation to you and Ms. Stacey Gerard, Assistant Administrator and Chief Safety Officer, at which he outlined the Board's position—that current standards and regulations are insufficient and that the responsibility for hazardous materials loading and unloading is the primary responsibility of PHMSA. As stated in our October 29, 2001, comments regarding RSPA's notice of proposed rulemaking to address this issue, 49 *United States Code* Section 5102 and 49 CFR 107.4 include "loading, unloading, or storage" incidental to movement as an aspect of transportation. Thus, we continue to believe such loading and unloading, particularly of bulk containers such as railroad tank cars, highway cargo tanks, and intermodal bulk containers, to be transportation-related functions.

The Safety Board is pleased that PHMSA has indicated its willingness to reconsider its position on this issue. The Board is encouraged that you support a system safety approach for the safe transportation of hazardous materials, including loading and unloading operations. We note that PHMSA has formed a working group with industry representatives to develop industry standards that can be considered by PHMSA for incorporation into the hazardous materials regulations. We further note that this working group met on December 13, 2006, and January 16, 2007. We appreciated the group's invitation for the Board's participation on this group; Mr. Chipkevich attended the January 16 meeting.

The Safety Board notes PHMSA's request that the Board retain an "open" classification for these recommendations pending completion of the working group's tasks and consideration by PHMSA of the group's recommended standards. The Board believes that this is a reasonable request and we are hopeful that PHMSA's new actions will result in a favorable resolution to the recommendations. Safety Recommendations I-02-1 and -2 remain classified "Open—Unacceptable Response" pending further, positive, indications that PHMSA is acting to revise its requirements related to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers as recommended, and the implementation of the recommended oversight program to ensure industry compliance. We would appreciate receiving updates as PHMSA's efforts continue.

Thank you for your reconsideration of these recommendations and your commitment to transportation safety.

Sincerely,

Mark V. Rosenker
Chairman

cc: Ms. Linda Lawson, Director
Office of Safety, Energy, and Environment
Office of Transportation Policy