U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

MAY 18 2004

Mr. Richard J. Lloyd
Manager Regulatory Compliance
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501

Ref. No. 04-0090

Dear Mr. Lloyd:

This is in response to your April 5, 2004 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to incident reporting. You request clarification of the incident reporting requirements in the December 3, 2003 Final Rule, "Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form," under Docket HM-229 in regard to the application of pre-transportation loading functions performed by shippers as found in the October 30, 2003 Final Rule, "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage," under Docket HM-223. Specifically, you ask whether hazardous materials incidents that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up the shipment, or during unloading operations conducted by consignee personnel after the hazardous material has been delivered, are required to be reported under §§ 171.15 and 171.16 of the HMR.

The answer is no. The hazardous materials incident reporting requirements apply to hazardous materials incidents that occur during transportation in commerce. As defined in Docket HM-223, transportation functions, such as shipper loading operations, are regulated under the HMR. However, an incident that occurs during operations by a shipper prior to a carrier's arrival are not subject to the incident reporting requirements because the incident does not occur during transportation.

I hope this information is helpful.

Sincerely,

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

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171.16

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
Tel 610 481-4911

Foster
§ 171.16
Incident Reports
04-0090

5 April 2004

Mr. T. Glenn Foster
U. S. Department of Transportation
Office of Hazardous Materials Standards DHM-10
Research and Special Programs Administration
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Foster:

Re: Docket No. RSPA-99-5013 (HM-229)

Please refer to our conversation on 3 March 2004 regarding my letters of 6 January and 17 February 2004 requesting clarification of the HM-229 reporting requirements for hazardous materials incidents that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up a shipment.

We will appreciate your response as soon as possible. Thank you.

Sincerely,

R. J. Lloyd

Richard J. Lloyd
Manager Regulatory Compliance

Enclosure

M:Lloyd/Dockets/HM229

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
Tel 610 481-4911

17 February 2004

Mr. T. Glenn Foster
U. S. Department of Transportation
Office of Hazardous Materials Standards DHM-10
Research and Special Programs Administration
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Foster:

Re: Docket No. RSPA-99-5013 (HM-229)

Attached is a copy of our 6 January 2004 letter requesting clarification of the HM-229 reporting requirements for hazardous materials incidents that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up a shipment.

We will appreciate your response as soon as possible. Thank you.

Sincerely,

R. J. Lloyd

Richard J. Lloyd
Manager Regulatory Compliance

Enclosure

M:Lloyd/Dockets/HM229

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
Tel 610 481-4911

6 January 2004

Mr. T. Glenn Foster
U. S. Department of Transportation
Office of Hazardous Materials Standards DHM-10
Research and Special Programs Administration
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Foster:

Re: Docket No. RSPA-99-5013 (HM-229)

Please clarify whether the loading of packaged hazardous materials and bulk hazardous materials is a pre-transportation function when completed by the shipper prior to a carrier's arrival at a loading facility. We find the DOT's final rule, HM-229, confusing due to the recent final rule, HM-223, and its application to pre-transportation loading functions performed by shippers.

On pages 67750 and 67751 in the 3 December Federal Register for HM-229, the following is shown (underline added by writer):

> This final rule requires reporting of incidents under Sec. Sec. 171.15 of 171.16 that occur during the time that the material is in transportation. Consistent with the definitions adopted in HM-223, incidents that occur during loading operations conducted by carrier personnel or in the presence of carrier personnel must be reported, as must incidents that occur during unloading operations conducted prior to a carrier's departure from the consignee's premises. Hazardous materials <u>incidents that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up the hazardous material</u> or during unloading operations conducted by consignee personnel after the hazardous material has been delivered and the carrier has departed the premises <u>are not required to be reported under Sec. Sec. 171.15 and 171.16.</u>

The final rule, HM-229 (above), indicates that incidents occurring during a shipper's loading operations and prior to a carrier's arrival are not part of the functions subject to the Hazardous Materials Regulations (HMR). However, HM-223 addresses the application of the HMR to the loading function in the revised 49 CFR section 171.1, Applicability of Hazardous Materials Regulations to persons and functions (Federal Register page 61937 and 61938), by including the following in the list of Pre-transportation functions in paragraph (b) (3) and (b) (13):

(3) Filling a hazardous materials packaging, including a bulk packaging.

(13) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.

Therefore, the HM-223 revisions apply the HMR to all pre-transportation functions performed in advance of the actual transportation to prepare a shipment of hazardous materials for transportation. According to paragraph 171.1 (b) (3) and (13), this includes the loading of packaged or filling (loading) bulk hazardous materials.

As you can see from these final rules, it is unclear how to apply the Hazardous Materials Regulations to the loading function performed by the shipper prior to a carrier's arrival at a loading facility. Air Products will appreciate your help in clarifying the regulations so that our company will be in compliance with the intended purpose of the recent regulatory revisions.

Sincerely,

R. J. Lloyd

Richard J. Lloyd
Manager Regulatory Compliance

M:Lloyd/Dockets/HM229