



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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Washington, D.C. 20590

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Reference No.: 05-0187

Dear Mr. Coburn:

This responds to your letter requesting clarification of the term “unloading incidental to movement” in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) on behalf of your client, Georgia-Pacific Corporation. Specifically, you ask whether unloading of bulk or other hazardous materials while the power unit is still attached to the transport vehicle and the driver of the motor vehicle being unloaded is at the same facility where the unloading occurs, but is not present at the actual site of the unloading, constitutes “unloading incidental to movement.”

The answer is no. Section 171.8 defines “unloading incidental to movement” to mean “removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivery carrier’s departure from the consignee’s facility or premises, or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation.” We do not consider a driver to be “present” when he is in the facility where unloading operations are performed but is not at the actual unloading site where he can observe the unloading process. Hence, such unloading is not, “incidental to movement.”

I trust this satisfies your inquiry.

Sincerely,

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



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Corbin
§ 171.8
Definitions
05-0187

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July 29, 2005

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
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Re: Request for Clarification -- HM 223, Applicability of Hazardous Materials Regulations to Loading, Unloading and Storage

Dear Ms. Mitchell:

By this letter, Georgia-Pacific Corp. hereby requests clarification of a question that has arisen in connection with the definition of the term "unloading incidental to movement" in section 171.8 of the Hazardous Materials Regulations, 49 C.F.R. § 171.8. As relevant, that section states as follows:

Unloading incidental to movement means removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation.

The question is whether the unloading of bulk or other hazardous materials constitutes "unloading incidental to movement" when the driver of the motor vehicle being unloaded is present at the same facility at which the unloading is occurring, but is not present at the actual site of the unloading, and the power unit operated by that driver prior to unloading remains attached to the trailer or container being unloaded. This question most often arises in connection with private motor carriage operations conducted by Georgia-Pacific. Unloading often occurs at Georgia-Pacific facilities where the driver's services are not used in connection with unloading operations that follow the driver's delivery

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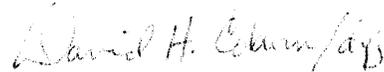
of a load, but the driver's power unit remains at the unloading site even though the driver is at another place in the facility or has left the facility.

Our judgment is that since the unloading is not performed either by carrier personnel, or in the presence of the driver or other carrier personnel, the unloading is not "unloading incidental to movement" and thus not within the scope of the HMR. The agency's regulatory authority in this situation appears to turn on the presence or not of the driver *at the site of unloading*, as opposed to some other point in the same facility. This interpretation finds support in the above-quoted definition of "unloading incidental to movement" and at § 171.1(d)(2), which likewise provides that the HMR do not apply to unloading operations where the driver of a private motor vehicle is not present in the unloading area.

However, neither the agency's October 30, 2003 final rules decision, or its April 15, 2005 decision, addresses precisely the situation of the carrier's power unit's continued attachment to the trailer or container being unloaded. The October 2003 decision notes that unloading would not be subject to the HMR where, among other things, the carrier has "detached its motive power." See 68 Fed. Reg. at 61917. Further, the April 2005 decision makes clear that in the situation where the driver is present at the facility for purposes of picking up another load (and thus presumably has removed his power unit from the site of the unloading), but is not present at the point of unloading, then the unloading is not "unloading incidental to movement." 70 Fed. Reg. at 20021. Nonetheless, our understanding is that whether the motive power unit remains attached to the trailer or container being unloaded is not a factor in determining whether or not the HMR apply. Rather, the critical factor in terms of HMR applicability appears to be the presence or not of the driver or other carrier personnel.

We look forward to your written confirmation that our understanding is correct.

Respectfully,



David H. Coburn
Attorney for Georgia-Pacific Corp.