



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

DEC 5 2008

1200 New Jersey Ave., SE
Washington, DC 20590

Mr. Andrew Abrams
761 West Sproul Road Unit 208
Springfield, PA 19064

Ref. No.: 08-0273

Dear Mr. Abrams:

This is in response to your October 28, 2008 letter requesting clarification of the requirements for Design Certifying Engineers (DCEs) and Registered Inspectors (RIs) under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). We provided you with a letter (Ref. No.: 08-0205; copy enclosed) on October 21, 2008 addressing the roles performed by the DCE and RI during the assembly and installation of Smart-Hose Passive Devices. This letter provides additional clarification, as requested by your October 28, 2008 letter. Your questions are restated and answered as follows:

Q1: Is the DCE's certification intended to be a "one-time" certification? What if the DCE dies or does not provide consent for the company to use the certification?

A1: The DCE's certification indicates that the design and construction meets the applicable DOT specification. This is a "one-time" process; once the DCE approves the design and provides the necessary documentation there is no need for the manufacturer to have the design recertified. The DCE certification remains effective with or without the consent of the DCE and even in the event that the DCE dies. A new DCE certification is only required if the previously approved design is modified. As defined in § 180.403, a "modification" means any change to the original design and construction of a cargo tank or cargo tank motor vehicle that affects its structural integrity or lading retention capability, including changes to equipment certified as part of an emergency discharge control system required under § 173.315(n)(2). Excluded are the replacement of components of similar design and of the same size.

Q2: Is the RI's supervision required for the installation of a hose-based system that provides the required passive shut-down capability?

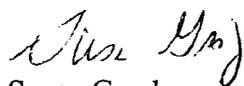
A2: No. As explained in our October 21, 2008 letter and provided in § 173.315(n)(2)(iii), RI supervision is not required for the installation of emergency discharge control equipment that is installed and removed as part of regular operation of the cargo tank motor vehicle (e.g., a hose). It is the responsibility of the DCE to certify that the emergency discharge control system is designed to automatically shut off product flow without the need for human

intervention within 20 seconds of an unintentional release caused by a complete separation of a liquid delivery hose (§ 173.315(n)(2)(ii)). Given that the DCE approves the design of the emergency discharge control equipment and it is attached to a cargo tank motor vehicle in the same way as an ordinary hose, RI supervision is not necessary.

In addition, if you are aware of an operator that is using a new or modified hose design that has not been approved by a DCE you may file a complaint at <http://www.phmsa.dot.gov/hazmat/enforcement> or contact our enforcement office directly at (202) 366-4700.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



Susan Gorsky
Regulations Officer
Office of Hazardous Materials Standards

Andrew Abrams
761 West Sproul Road Unit 208
Springfield, PA 19064

Supko
3173.315
Cargo Tanks
08-0273

Tuesday, October 28, 2008

Ms. Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Technology
US Department of Transportation PHMSA
1200 New Jersey Avenue, SE Building 2nd Floor
Washington, DC 20590

Re: Letter of Interpretation – 49 CFR 173.315- *Follow-Up*

Dear Ms. Gorsky

I am writing to follow-up on your October 21 letter in connection with the above captioned inquiry to ask for an additional clarification of the regulations as it relates to the role of a DCE and Registered Inspector in the assembly and installation of certain passive devices.

In your letter you indicated that (1) The DCE is only required to certify that the design confirms to the performance standard and that there is no requirement to review each component throughout the manufacturing process.

Issue: if the regulations indicate that” *All components of the discharge system that are integral to the design must be included in the certification.*” and these components have certain inconsistency such as sources of material or metallic composition, is the DCE’s certification intended to be a “*one-time*” certification?

- Can there be a certification issued by a now deceased DCE?
- Does the DCE’s certification need to specifically identify each of the components, sources of material, bills of material that they are certifying and if the manufacturer changes these components, a new DCE certification might be required? If so, what would happen if the DCE issued a generic system certification and then was no longer employed by the company – could the company continue to use the certification without his/her consent?

Issue: In your reply you indicated that the Emergency Discharge Control Equipment must “*be installed under the supervision of a Registered Inspector*” but you identified an ambiguity regarding hoses. We believe that the regulations were promulgated in connection with systems such as RF devices that are manufactured by one company but ultimately both assembled and installed by the end-user (ie truck assembler) and not the manufacturer. Therefore, the requirement for a Registered Inspector was to **assure that the system was correctly installed** and not put together by some unknowledgeable party.

- Since the Smart-Hose system (or any fully installed hose based passive device) has its final installation completed by its own employees and not the end-user, is the intent of the regulations to **not require any supervision** while this type of passive device is installed? Why would we require a Registered Inspector to install an RF system but require no supervision either by the manufacturer or the end user in the case of a hose based system?
- Do you agree that since the hose is installed merely by threading it onto the appropriate connection, if we define installed for hoses it would have been impractical to have every truck driver become a RI. If however we define “installed” for hose based passive device systems to be when the passive device is installed within the hose, would it not make sense for an RI to oversee this installation and therefore be consistent with the intent of the regulations?
- Was the intent of the language ***“under the supervision of a Registered Inspector”*** to require the system to Registered Inspector to look carefully at or over; view closely and critically or examine formally or officially the installation of the passive device and therefore must this function be performed contemporaneously with the installation of the system? More succinctly, can this function be performed by someone who is not present during the installation?

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andy Abrams', with a horizontal line drawn underneath it.

Andy Abrams