



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

Administrator

1200 New Jersey Ave., S.E.
Washington, DC 20590

JAN 15 2009

The Honorable Mark Rosenker
Chairman
National Transportation Safety Board
490 L'Enfant Plaza, SW
Washington, DC 20594

Dear Chairman Rosenker:

This letter provides an update on our progress in addressing Safety Recommendations I-02-01, I-02-2, and R-04-10 issued following the National Transportation Safety Board (NTSB) investigations of rail tank car accidents on July 14, 2001, in Riverview, Michigan and September 13, 2002, in Freeport, Texas. The recommendations state:

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-02-01, an oversight program to ensure compliance with these requirements.

R-04-10:

In cooperation with the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), develop regulations that require safe operating procedures to be established before hazardous materials are heated in a railroad tank car for unloading; at a minimum, the procedures should include the monitoring of internal tank pressure and cargo temperature.

On January 4, 2008, PHMSA published a notice (73 FR 916) reflecting our analysis of incident data and soliciting comments and information on a set of recommended practices for loading and unloading operations involving bulk packagings used to transport hazardous materials. Most commenters to the notice support adoption in the Hazardous Materials Regulations of procedures governing bulk hazardous materials loading and unloading operations as the best way to enhance the safety of such operations.

Following our review of comments received in response to our January 2008 notice, PHMSA conducted a further in-depth review of serious incident data involving hazardous materials transported by highway and rail in quantities of greater than 3,000 liters during the five-year period from 2003 to 2007. This longer time period captured a larger and more current pool of serious incident data from larger quantity shipments of hazardous materials. We also conducted a qualitative comparative analysis of our proposed recommended practices to the causes summarized in the event descriptions of each serious incident to gauge whether application of the proposed recommended practices may have addressed the incident or enhanced safety of bulk loading and unloading operations.

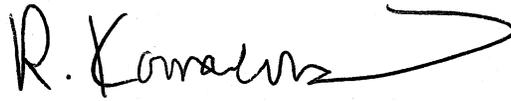
Our review of the data suggests that human error is the greatest single primary cause of accidents during, or resulting from, loading and unloading operations accounting for over half of the serious incidents. Much of the human error can be attributed to inattention to detail in performing a loading or unloading function, including failure to follow attendance requirements, leaving valves in open or closed positions, or improperly connecting hoses and other equipment. Defective or deteriorating devices or components (e.g., a valve failure, a gasket leak) as the primary cause accounted for over a quarter of serious incidents and a variety of other causes (e.g., freezing temperatures, lading plugs in piping, lading/vessel incompatibility) accounted for the remainder. The general conclusion of the in-depth review is that the safety of bulk loading and unloading operations can be enhanced through the identification and implementation of measures targeted to reduce accidents resulting from human error.

Based upon the results of our internal incident analyses and comments received in response to our *Federal Register* notice, we have concluded that rulemaking action to address the safety issues we have identified is appropriate. Therefore, PHMSA has formally initiated a rulemaking under Docket No. PHMSA-2007-28119. We will continue to consult with EPA and OSHA as we consider a variety of regulatory alternatives with a view towards the development of enhanced safety requirements for 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. Accordingly, we request that Safety Recommendations I-02-01, I-02-01, and R-04-10 be classified as "Open-Acceptable Response". We appreciate your consideration in this matter.

If you have any questions, concerns, or comments, please feel free to contact me at 202-366-4433.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kowalewski", with a long, sweeping horizontal stroke extending to the right.

Rick Kowalewski
Acting Assistant Administrator/
Chief Safety Officer