

Minutes from Inaugural DAA meeting

Meeting held March 17, 2014 in Washington D.C.

(13 DAA companies, 3 DOT attended)

- **If a DAA notes issues with a portable tank (PT), notifies the owner and owner fixes the issues should this be reported on the inspection report? On the bi-annual report to DOT? Answer:** *Yes, all noted items, including those for which corrective actions were completed, need to be noted on your inspection report. The DAA's are our "eyes and ears" in the field. Any notable items/concerns should be noted, and PHMSA notified accordingly, especially if the DAA believes there is a significant safety concern.*
- **How should duplicate spec plates be handled by owners and/or DAA? Should DOT keep copies of spec plates for new designs, should DAA keep copies? Do we want to follow the National Board requirements which cost money to obtain a copy? PHMSA will review this issue for later discussion. The National Board requirements are in place for a reason, but PHMSA will provide more guidance on this issue. Keeping copies of spec plates seems like a logical idea, but there are difficulties in this process, as well, that may need to be addressed before such a requirement is implemented.**
- **Please review the Hattie Mitchell letter to see if it is still a valid PHMSA position. The interpretation letter is attached. It doesn't appear that PHMSA has changed its position on this issue; however it will be further reviewed to ensure the position is still current or whether it should be evaluated further.**
- **Modal inspectors/investigators, what type of training do they get and what records are kept showing they know the HMR and technical issues of the mfg. process. With the re-evaluation of the DAA program, and the subsequent revision of all DAA approvals, PHMSA will further define the training, knowledge, skills, and abilities required by certifying inspectors. Additionally, PHMSA has internal training and processes to ensure consistent and knowledgeable inspection practices for its own investigators. We have even recently constructed a new training facility in Oklahoma City, OK to assist in the continued training of our investigators. Each investigator is required to meet performance standards prior to becoming a lead investigator. Core Competencies have been drafted for each inspection activity conducted by PHMSA investigators, corresponding with a training regimen to ensure proper and consistent inspection procedures. Records of training and standards are kept on file with PHMSA for documentation purposes.**

- **USA allows the owner to perform the 2.5 year visual inspection on PT's. PHMSA issued an interpretation letter which effectively allows anyone to perform the 2.5 year test. Internationally a DAA is required to perform this inspection. This makes US performed 2.5 inspection not recognized by international bodies. Internationally, companies (90%) want a DAA to perform such inspections not the owner. This is correct, the U.S. authorizes anyone to conduct the 2.5 year testing, as being "approved by the competent authority", not just those who are DAA's. This was issued as an interpretation (attached). This does go against PHMSA's stated goal for international harmonization. Because this issue was raised at our meeting, your concerns have been forwarded to our Standards and Rulemaking Division for review of this interp for possible update. PHMSA has not made the determination, at this time, that only an authorized DAA should be authorized to perform 2.5 year testing, but will evaluate this policy, and the interpretation on file, further.**
- **Also, International (IMO-IMDG Code) regulations allow a plus or minus of three months to perform 2.5 and 5 year visual inspection and tests. This subject has recently been posed to PHMSA's International Standards Division as well and is currently under review for a possible change. PHMSA will notify the public, and the DAA's directly if this requirement changes.**
- **HM-241, DOT must disagree with the National Board and ASME requirements for UN portable tanks since this adoption will require 2,800.00 worth of training for each inspector in order to perform such inspection as outlined within this rule change if adopted with no safety benefit for having such training. This issue is currently open for public comment, and it is your responsibility to correspond to PHMSA and participate in the comments process if you have concerns, either for or against the proposed regulatory change. Cost analysis is something that is incorporated into the Rulemaking Process with great concern. PHMSA has not made a decision on this topic as of yet.**

Give DAA the link to allow them to get automatic notification on rulemakings by email. (Federal Register notice are controlled by Standards and Rulemaking, not Approvals & Special permits) You can find the PHMSA "notices" page at the following link:

http://phmsa.dot.gov/hazmat/regs/notices . Here you will find updates on Federal Register notices, safety notices, etc. Additionally, you can sign up for email notifications of changes of specific areas of the PHMSA webpage at the following link:

http://service.govdelivery.com/service/multi_subscribe.html?code=USDOTPHMSA. Lastly, you can receive Federal Register notifications via email at the following link: Go to

<http://listserv.access.gpo.gov/archives/fedregtoc-l.html>

1. *Select "Join or leave the list" and follow the instructions.*

- Europe is discussing requiring DAA to have Quality Assurance training in addition to competent authority approval. Will DOT consider this too?** *The U.S. has not incorporated such a requirement at this time. Our DAA approval will cover the requirements for PHMSA authorized DAA's. If such a requirement were to be proposed, the U.S. Public would have a chance to comment prior to implementation. It is not under consideration at this time.*
- What does independent really mean for a DAA? Can a DAA have some interest in a repair shop and still be independent?** *The answer is no. A DAA is required under 49 CFR 107.402 to be independent of the tank or MEGC manufacturer for which they are providing DAA services. A repair or rebuild of a package is considered a manufacturing function by PHMSA under current regulatory language. PHMSA will work to better define this definition, both under your revised approval, as well as with improved regulatory language under 49 CFR 107.402 and Part 180. This is not a new requirement, as all of PHMSA's 3rd Party inspection bodies are required to maintain an independent relationship with manufacturers, and are authorized only to perform the duties as an approved 3rd Party Agency.*
- PHMSA requires that requested documents, either as a result of an investigation or safety review, are received in a timely manner.**
- PHMSA representatives discussed the creation of a general DAA message board, monitored by PHMSA staff to discuss issues with PHMSA and the respective DAA's in an open electronic discussion forum. Such a forum would be helpful to identify issues noted in the field. Some of the attendees noted that being anonymous would be important on certain issues. PHMSA explained that "we can't un-know what we know". Meaning that, if you tell PHMSA something of an illegal nature, it is PHMSA's responsibility to investigate such activities. However there is a way to discuss such issues without notifying PHMSA of a specific company's involvement. Such a forum would rely heavily on the participation of the DAA's.**
- PHMSA will issue a "Show Cause" letter to all currently approved DAA's proposing modification to their current approval letter. In the show cause letter, PHMSA will include a proposed draft approval. The DAA's who responded to PHMSA's meeting request will have a chance to comment on the draft approval requirements. Companies who were on file with PHMSA as an approved DAA, but did not respond to**

the PHMSA DAA meeting invitation, sent via certified mail, will be issued a notice of proposed termination for failure to respond to PHMSA inquiry regarding their approval. They will have 30 days to respond to the notice to explain their actions and show cause why PHMSA should not terminate their existing approval. These companies will not be issued a new approval, as discussed at the DAA meeting, without further verification of their DAA status.

- Positive responses to rulemakings help to speed up the process. If you do not reply to petitions for rulemakings, or requests for public comment, your voice cannot, and most likely will not, be heard. If the whole of the industry believes the whole rule has great value and agrees with the proposed regulatory changes, but doesn't reply with positive comments, the 2 negative comments against the rule hold higher value and can prevent a rulemaking from passing. So, with that said, it is important to respond with comments, particularly in matters that directly affect your industry.

- PHMSA representatives posed the following questions to the approved DAA's who attended the meeting, with the intent that the answers provided will be used as a guidepost for requirements of the approval and possibly regulatory change language:
 1. What functions do you believe should be authorized to be conducted only by an approved Designated Approval Agency, for a new DAA coming in for approval to DOT?
 2. For a new DAA, what do you believe should be the required performance standard for DAA inspectors to perform the tasks listed above. [Knowledge, duties and skill level(s), certifications, background, etc.]
 3. Based on the current DAA program in place, under your current approval requirements, describe what you believe PHMSA is doing well, and describe what items you believe PHMSA is not doing so well.
 4. What specific issues do you have, if any, regarding PHMSA's approval process, its inspection program, or the Hazardous Materials Regulations. Please make a suggestion as how to fix these issues as you see them and for which you noted in your response.

MEETING ADJOURNED

Companies attending: Bureau Veritas; Polar Service Centers; Burdette & Associates; Envirotech; Marine Cargo Surveys Hawaii; ABS; TUV Rheinland; Ocean Surveys Management;

Gold Tank Inspection Services; Lloyd's Register; SGS; Hazmat Resources, Inc.; and Western Cascade.

DOT Representatives attending: Ryan Paquet (Director, Approvals and Permits Division); Duane Cassidy (Chief, Pressure Vessels Branch, Approvals and Permits); and Tom Lynch (Investigator, Southwest Regional Office).

Documents Attached: Presentations provided; interpretation letter regarding 2.5 year test