



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

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

**DEC 17 2009**

Mr. Terry Tavares  
Environmental Technician  
Schneider National Bulk Carriers, Inc.  
P.O. Box 2700  
Green Bay, WI 54306-2700

Reference No. 09-0196

Dear Mr. Tavares:

This is in response to your August 3, 2009 letter requesting further clarification of the incident reporting requirements in 49 CFR 171.16 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if incidents involving leaks from a customer's piping or storage tank that occur during the time a hazardous material is unloaded from a cargo tank motor vehicle into a storage tank must be reported.

As required in § 171.16, each person in physical possession of a hazardous material at the time an incident specified in § 171.16 occurs during transportation (including loading, unloading, and temporary storage) must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 within 30 days of discovery of the incident. For purposes of the HMR, transportation begins when a carrier takes physical possession of a hazardous material for the purposes of transporting it and continues until the hazardous material is delivered to the destination indicated on a shipping paper, package marking, or other medium. In the scenario you describe, the material is considered to be in transportation and in the possession of the carrier until delivery to the consignee is complete. Therefore, the carrier must complete and submit a DOT incident report.

You also ask if a carrier is required to file a hazardous materials incident report in the following four scenarios: (1) material is flowing through the customer's piping to their storage tank and the piping develops a leak; (2) a leak in the customer's storage tank is noticed during the unload; (3) the customer's storage tank overflows either due to a faulty sight gauge or the plant operator miscalculated the amount of material in the storage tank; or (4) the customer's storage tank overflows due to driver miscalculation or too much air pressure. If these events occur while the hazardous material is being unloaded from the cargo tank, the answer is yes. If scenarios 1, 3, and 4 occur after the carrier has departed the premises, the carrier is not subject to the incident reporting requirements.

For your information, there are certain exceptions from the incident reporting requirements. As specified in § 171.16(d), unless a telephone report is required under § 171.15, incidents that do not require an incident report include the following:

- 1) A release of a minimal amount of hazardous material from a vent, for materials for which venting is authorized; the routine operation of a seal, pump, compressor, or valve; or connection or disconnection of loading or unloading lines, provided that the release does not result in property damage. See § 171.16(d)(1).
- 2) An unintentional release of hazardous material when the material is properly classed as a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9, and the material is not a hazardous waste. See § 171.16(d)(2).

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell", with a long horizontal flourish extending to the right.

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

August 3, 2009

Edmonson  
§ 171.16Incident Reports  
09-0196

Mr. Edward T. Mazzullo  
Director, Office of Hazardous Materials Standards  
U.S. DOT/PHMSA (PHH-10)  
1200 New Jersey Avenue, SE East Building, 2nd Floor  
Washington, DC 20590

**RE: INTERPRETATION OF 49CFR §171.16**

Dear Mr. Mazzullo:

We are a bulk transportation company. On behalf of our company and our customers, I would like to receive written clarification of the incident reporting requirements in 49CFR §171.16. On two occasions I have called the Hazardous Materials Information Center with certain scenarios and received the same answer both times.

The majority of our deliveries from our cargo tanks are made to fixed storage tanks at the consignee using our product transfer hose and air pressure or a pump. I questioned the HMIC as to whether or not we (as the transporter) were responsible for filing an incident report if the storage tank or the customer's fill line develops a leak during the process of transferring the product. Both times I was told yes because it happened during the process of unloading. Hence, I have been reporting these incidents as required.

However, I have received conflicting views from the industry. Some facilities question whether or not they are in possession of the product once the product is out of our transfer hose and into their piping or storage tank, even though the unload is not complete and product is still flowing through the transfer hose. They believe the transporter should not be responsible for any reporting requirements because it would then fall under their facility reporting guidelines.

Please clarify if the transporter is required to file an incident report in the following scenarios during a hazardous material unload from a cargo tank. In addition, please clarify if the quantity of product spilled, or whether or not it spilled into a containment area around the storage tank, has any bearing on the requirement to report.

- Product is flowing through the customer's piping to their storage tank and the piping develops a leak.
- A leak in the customer storage tank is noticed during the unload.



- The customer's storage tank overflows due to a faulty sight gauge or the plant operator miscalculated the amount in the storage tank.
- The customer's storage tank overflows due to driver miscalculation or too much air pressure.

Your attention to this request and formal guidance is greatly appreciated. Please do not hesitate to call or email me if more information is needed. Thank you for your time.

Sincerely,



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