



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

JAN 25 2013

Andrew Comai  
International Union UAW  
8000 E Jefferson  
Detroit, MI 48103

Reference No. 12-0175

Dear Mr. Comai:

This is in response to your e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR 171-180) applicable to a woman dying following a hazardous material incident. Following is your description of the incident:

A driver working at a trucking terminal pumps diesel fuel into a truck's fuel tanks as a normal part of her work. In the case of diesel spills she responds to spills with defensive measures. (Another worker who handles bulk storage transfers of diesel fuel is trained in spill cleanup). The driver is doused with fuel as she removes the pump from the tank of the vehicle. Some diesel fuel is spilled, not enough to trigger "Reportable Quantity" requirements under DOT [U.S. Department of Transportation], EPA [Environmental Protection Agency], or OSHA [U.S. Department of Labor's Occupational, Safety and Health Administration]. However, some of the spilled diesel fuel soaks the worker's clothing. The worker handling the fuel is sent to a hospital after finding the emergency eyewash and shower are non-functional, complaining of inhalation of diesel vapors, and burning skin where the diesel came in contact with the body. She dies the next day from acute respiratory distress syndrome triggered by "possible inhalation of diesel fuel."

Your questions are paraphrased and answered as follows:

- Q1. Does the employee (driver) meet the definition of "hazmat employee" in § 171.8 of the HMR?
- A1. Based on the information in your e-mail, we do not have sufficient information to determine if the driver meets the definition of "hazmat employee" under § 171.8 of the HMR. The definition of "hazmat employee" reads in part that a person, who in the course of employment, directly affects hazardous materials transportation safety;

loads, unloads, or handles hazardous materials; prepares hazardous materials for transportation; is responsible for the safety of transporting hazardous materials; or, operates a vehicle used to transport hazardous materials.

PHMSA has no knowledge as to what cargo the driver was transporting. Filling the fuel tank to drive a truck is not a pre-transportation function, as defined in § 171.8.

- Q2. Does this incident qualify as a "reportable incident" according to § 171.15 (b) of the HMR?
- A2. No, the decedent driver was filling up the fuel tank for operating the truck. The incident did not involve the cargo, which may or may not have been a hazardous material.
- Q3. What specific exemptions or exceptions apply to the incident, the work process being performed, the employee's status as a possible hazmat employee, or any other aspect of the incident?
- A3. None.
- Q4. Is there a statute of limitations for a complaint to be filed with DOT regarding this incident?
- A4. No. Hazardous materials incidents should be reported as soon as practicable, but no later than 12 hours after the incident, to the National Response Center (NRC). An incident report should be filed within 30 days.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,

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

Joseph Solomey  
Assistant Chief Counsel for Hazardous Materials Safety

McIntyre  
3171.8  
3171.15 (b)

**Drakeford, Carolyn (PHMSA)**

**From:** Betts, Charles (PHMSA)  
**Sent:** Monday, August 13, 2012 9:37 AM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: Feedback: General Questions/Comments Regarding the PHMSA Enforcement Program

Definition/Reportable Quantity  
12-0175

**Importance:** High

-----Original Message-----

**From:** PHMSA Webmaster  
**Sent:** Friday, August 10, 2012 5:31 PM  
**To:** HM-Enforcement (PHMSA); PHMSA Webmaster  
**Subject:** Feedback: General Questions/Comments Regarding the PHMSA Enforcement Program

Incident description: A driver working at a trucking terminal pumps diesel fuel into a truck's fuel tanks as a normal part of her work. In the case of diesel spills she responds to spills with defensive measures. (Another worker who handles bulk storage transfers of diesel fuel is trained in spill cleanup). The driver is doused with fuel as she removes the pump from the tank of the vehicle. Some diesel fuel is spilled, not enough to trigger 'Reportable Quantity' requirements under DOT, EPA, or OSHA. However, some of the spilled diesel fuel soaks the worker's clothing. The worker handling the fuel is sent to a hospital after finding the emergency eyewash and shower are non-functional, complaining of inhalation of diesel vapors, and burning skin where the diesel came in contact with the body. She dies the next day from acute respiratory distress syndrome triggered by "possible inhalation of diesel fuel".

**Questions:**

- Is the employee considered a "hazmat employee" under the definition provided in 49 CFR 171.8?
- Does this incident qualify as a "reportable incident" according to 49 CFR 171.15 (b)?
- What specific exemptions or exceptions apply to the incident, the work process being performed, the employee's status as a possible 'hazmat employee', or any other aspect of the incident?
- Is there a 'statute of limitations' in terms of the amount of time allowed for a complaint to be filed with DOT in relation to said incident?

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