



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

AUG 14 2018

1200 New Jersey Avenue, SE
Washington, DC 20590

ESF Transport
360 Kingsland Avenue
Brooklyn, NY 11222

Reference No. 18-0074

Dear Sir,

This letter is in response to your May 15, 2018, email and subsequent phone conversation with a colleague requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to unloading requirements for combustible liquids. You describe a scenario in which your company delivers fuel oil classified as a combustible liquid to residential and commercial properties in New York City. Specifically, you ask if the attendance requirements in § 177.837(d) require your driver to enter a building to visually inspect the receiving tank every 5 minutes during unloading from a cargo tank motor vehicle (CTMV).

You state that requiring your driver to enter a building and climb down to the basement to observe the customer's container every 5 minutes during unloading is impracticable because it would result in the CTMV running unattended on a busy city street for up to 15 minutes at a time. Under your current procedure, in accordance with State and local requirements, the driver monitors all spill sources, such as the fill line, vent line, and delivery hose during the transfer of fuel oil to a consumer's container. The driver remains at the cargo tank controls to terminate the unloading in case of an overfill.

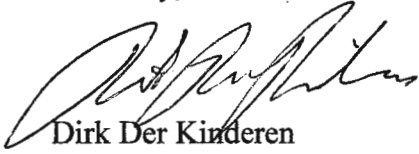
You are correct in that you are subject to the requirements of § 177.837(d) for attendance during unloading. However, in the scenario you presented, the HMR do not require that the qualified person attending the CTMV enter the building to visually observe the container in the basement during unloading. Observing the fill and vent lines, which are integral parts of the receiving container, meets the intent of the attendance requirements of § 177.837(d). The qualified person must remain within 150 feet of the cargo tank and 25 feet of the delivery hose.

Additionally, you request a change to the HMR. This Office cannot modify the 49 CFR through a letter of interpretation. If you believe a rulemaking change, such as a revision, addition, or deletion is warranted, we invite you to file a petition for rulemaking in accordance with 49 CFR 106.95, 106.100 and 106.105, including all information needed to support your petition. Your request will be further evaluated for merit to address in an upcoming rulemaking. For regulations in 49 CFR Parts 171 through 180, please submit the petition to: Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, PHH-10, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE, Washington,

DC 20590-0001. Please contact Mr. Steven Andrews in the Regulatory Review and Reinvention Branch of the Standards and Rulemaking Division at 202-366-8553 for more information.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dirk Der Kinderen', written in a cursive style.

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Patrick
Cargo Tanks
18-0074

January, Ikeya CTR (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Wednesday, May 16, 2018 4:42 PM
To: Hazmat Interps
Subject: FW: Letter of Interpretation - 177.837(d)

Hi Ikeya,

Below is a request for a letter of interpretation. Anthony spoke with Eugenio. Please let me know if you have any questions.

Thanks,
Jodi

From: ESF Transport [mailto:esfsafety@gmail.com]
Sent: Tuesday, May 15, 2018 4:57 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Letter of Interpretation - 177.837(d)

Dear Sir/Madam:

We respectfully request a letter of interpretation regarding 49 CFR 177.837 (d) which can be found below.

177.837(d)

(d) Unloading combustible liquids. For a cargo tank unloading a material meeting the definition for combustible liquid in §173.150(f) of this subchapter, the qualified person attending the unloading operation must remain within 45.72 meters (150 feet) of the cargo tank and 7.62 meters (25 feet) of the delivery hose and ***must observe both the cargo tank and the receiving container at least once every five minutes during unloading operations that take more than five minutes to complete.***

Overview/ Current Conditions:

We are a hazmat carrier in New York City. We deliver residential and commercial heating oil. Currently our delivery process is based NYC Fire Department & New York State Department of Environmental Conservation regulations as follows:

- Identify fill and vent line. (Note: If the tank is overfilled it will be released from the vent line.)
- Review tank gauge to determine if capacity exists to receive the intended transfer amount.

- Begin transfer and monitor all spill sources such as the fill, vent and delivery hose during the transfer.
- Driver must remain at cargo tank controls to terminate the transfer in case of an overfill.

Problem Statement:

The portion of the code highlighted above is counterproductive to safety and the environment. Based on the code, would you expect that we go inside a building to see a tank while leaving a placarded/hazmat vehicle running unattended in Manhattan? It could take us 15 minutes to get down to the basement and back to the cargo tank truck. The current code exposes us to unreasonable risks as follows:

- If the tank gauge is bad we are away from truck controls for an extended period of time while inspecting receiving container/tank. If we postulate that a release occurs immediately after we enter the building, the spill will exceed 1,800 gallons.
- While parked on city streets, trucks have been struck by cars while making deliveries causing spill/fires. Being away from the truck impedes our ability to mitigate the effects of a spill or fire in the incipient stages.
- Having the cargo tank truck running without our driver positioned at the vehicle controls opens us up to theft of the vehicle and from a terrorism perspective the theft of the vehicle puts many people at risk.
- Finally, if we follow this process to the letter it directly contravenes our HazMat Security Plan as required under 172.802 (2) (below)

172.802(2)

(2) *Unauthorized access.* Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.

Expectation:

Our expectation is that the current code will be modified to remedy the compliance issue that many fuel oil delivery companies face. We suggest the following:

177.837(d)

(d) Unloading combustible liquids. For a cargo tank unloading a material meeting the definition for combustible liquid in §173.150(f) of this subchapter, the qualified person attending the unloading operation must remain within 45.72 meters (150 feet) of the cargo tank and 7.62 meters (25 feet) of

the delivery hose. In addition, the qualified person must observe both the cargo tank and the receiving container at least once every five minutes during unloading operations that take more than five minutes to complete *only if they are both in direct line of sight. Note: The driver should not lose sight of the cargo tank truck to inspect the receiving tank.*

Kindest regards,

ESF Transport

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