



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

OCT 26 2018

Angela A. Iuso
Connell Foley LLP
56 Livingston Avenue
Roseland, NJ 07068

Reference No. 18-0060

Dear Ms. Iuso:

This letter is in response to your April 13, 2018 and May 9, 2018, letters requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to cargo tank motor vehicle (CTMV) repairs. Specifically, you present questions pertaining to a scenario in which a CTMV was repaired in accordance with § 180.407(b), but the documentation of the repair, as specified in § 180.417(b), is no longer available.

We have paraphrased and answered your questions as follows:

- Q1. You ask whether a DOT-registered cargo tank repair facility can validate and/or verify an undocumented repair by performing standard testing and inspection in accordance with § 180.407(g)(1)(iv).
- A1. The answer is no. Any repair of a cargo tank, including previous repairs, must be performed in conformance with the requirements of § 180.413(a). An undocumented repair is not compliant with the requirements to repair in accordance with § 180.413(a). Under § 180.413(a)(1) the repairs must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp and the repair must be made in accordance with the edition of the National Board Inspection Code in effect at the time the work is performed. Additionally, § 180.413(a)(3) requires that each person performing a repair of a Department of Transportation (DOT) specification cargo tank must be registered in accordance with subpart F of Part 107. An undocumented repair may not be retroactively validated by a subsequent DOT-registered cargo tank repair facility by performing requalification testing and inspection requirements in accordance with § 180.407 only.
- Q2. In the event the answer in A1 is no, you ask what an authorized entity must do to ensure the CTMV is safe, in compliance with 49 CFR Part 180, Subpart E, and eligible for hazardous materials service as a specification cargo tank.

A2. The CTMV may be eligible for hazardous materials service as a specification cargo tank if the undocumented repair is removed and replaced by a cargo tank repair facility meeting the requirements of § 180.413 (see A1). After the repair is completed, the cargo tank repair facility will generate the appropriate documentation of the repair. If this is not feasible, the CTMV may be able to return to hazardous materials service under the controls of a special permit, provided an equivalent level of safety can be demonstrated by the applicant. To apply, the CTMV owner must submit an application to the Associate Administrator for Hazardous Materials Safety in conformance with the requirements prescribed in 49 CFR Part 107, Subpart B. You may obtain information on the special permit application process from our website at: <http://www.phmsa.dot.gov/hazmat/regs/sp-a>. PHMSA may consider addressing this scenario in a future rulemaking.

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

Sincerely,

A handwritten signature in blue ink that reads "J. Glenn Foster". To the left of the signature, the word "for" is written in a cursive script.

for
Shane Kelley
Director, Standards and Rulemaking Division
Office of Hazardous Materials Safety

Geller
180.407(b)
Cargo Tanks
18-0060

FACSIMILE COVER SHEET

CONNELL FOLEY LLP
Attorneys at Law
56 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500

Date: April 13, 2018

Time:

MESSAGE TO:

MESSAGE FROM:

Name	Director Shane Kelley	Name	Angela Iuso, Esq.
Company	U.S. DOT	Company:	Connell Foley LLP
Fax No.	(202) 366-7041	Fax No.	(973) 535-9217
Telephone No.		Telephone No.	(973) 535-0500

RE: NATC-Inc.

MESSAGE:

Please see the attached. Thank you.

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IF NOT RECEIVED PROPERLY, PLEASE NOTIFY: **Julianne**
AT (973) 535-0500 EXTENSION : **2526**

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Angela A. Iuso
Direct Dial 973.840.2426
aiuso@connellfoley.com

April 13, 2018

Via Fax at 202-366-7041 and Federal Express
Director Shane Kelley
Standards and Rulemaking – PHH-10
US DOT – PHMSA
1200 New Jersey Ave. SE
Washington, D.C. 20590-0001

**RE: NATC -INC.
Follow Up Request for Response to 09/14/2014 request For Clarification**

Dear Director Kelley:

Please be advised that the undersigned and this firm represent the interests of NATC - INC. (hereinafter "NATC"). We write on behalf of NATC to hereby obtain from your office or, alternatively from PHMSA, a Letter of Guidance or Interpretation in reply to the request for clarification previously presented in 2014 directly by our client. Attached is a copy of that letter as well as a copy of the confirmation of receipt by your office and predecessor, Mr. Charles Betts. That letter sets forth the specific issue and need not be reiterated in its entirety here.

In brief, this is a very straight forward request for confirmation of a decades long industry and enforcement understanding of what the HMR requires in order to verify that "the suitability of any repair affecting the structural integrity of the cargo tank must be determined either by the testing required in the applicable manufacturing specification or in paragraph (g)(1)(iv) of this section" as quoted from 180.407(b)(1).

According to both the official OHMS website and general other references within the U.S. Department of Transportation, the PHMSA's Office of Pipeline and Hazmat Safety Standards & Rulemaking utilize the process of rulemaking to propose and adopt changes to regulations. Further, the process of rulemaking can include: "proposing and finalizing rules, the division post notices, advisory bulletins, special permits and state waivers, interpretations and NTSB recommendation." It is our position that a response to this public request for a clarification of the regulations within the HMR including 49 CFR 180.407(b) is required by your office.

Roseland Jersey City Newark New York Cherry Hill Philadelphia

www.connellfoley.com

April 13, 2018

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To: Director Shane Kelley

If the referenced 2014 request has previously been responded to in writing please provide us with a copy of that response. If not, please respond or advise us in writing as to your position if a response will not be forthcoming.

Thank you for your time and assistance in this matter. If you have questions feel free to contact the undersigned directly.

Very truly yours,

CONNELL FOLEY LLP



Angela A. Jose

AAI/jj

*** TX REPORT ***

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North American Transportation Consultants, Inc.

YOUR TOTAL TRANSPORTATION & SAFETY CONSULTANTS

P. O. Box 1404, Hightstown, NJ 08520

E-mail: mail@nadc-inc.com

Phone: (609) 426-0555

Date:	9/18/2014	Cover Sheet &	2	Pages
To:	U.S D.O.T - Charles Betts	Fax #:	202-366- 7435 7041	
From:	J. P Gibbons	Fax #:	609-443-0004	
Subject:	Request for Clarification of HMR 180.407 (b) Applicability			

C O M M E N T S

Please acknowledge receipt of this document via fax at (609) 443-0004 or via email at mail@nadc-inc.com.



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If you experience any problems with this transmission please contact our office directly at 609-426-0555.

Visit our Website at: www.49CFR.com

NATC

September 18, 2014

Via: Fax ~~202-366-7435~~
7041

Mr. Charles Betts
Director
Standards and Rulemaking – PHH-10
U. S. D.O.T – PHMSA
1200 New Jersey Ave. SE
Washington, D.C. 20590-0001

RE: Request for Clarification of HMR 180.407(b) Applicability

Dear Mr. Betts:

This letter will serve as formal request for written clarification of the HMR requirements. The issue concerns specification CTMVs and how they must be handled when the question of structural integrity is raised by an enforcement agency.

It has been my clear understanding that for over 40 years, when the structural integrity of a specification cargo tank is questioned the requirements in 180.407(b) would be applicable. Prior to HM-183 this same requirement was in 173.33. The first part of the requirement addresses how to handle *dents, cuts, gouges, corroded or abraded areas, leaks or any other condition that might render it unsafe for hazardous materials service*. These conditions would require repair and testing of the cargo tank. If an enforcement agency questioned the cargo tank on the basis of a previous repair or weld to the vessel itself in the absence of leakage, such a challenge would also be handled per 180.407(b).

Our concern is the safe and reasonable return of such specification CTMVs to hazardous material service per the requirements of the HMR.

Many older cargo tanks have had repairs to their heads or shells for which documentation of the repair is no longer available due to companies going out of business or lost documentation. It is my position that while the missing documentation may be a violation of 180.413(f) it does not mean the CTMV is unsafe to operate in hazardous materials service as a specification container. Our firm requires pressure testing the vessel before returning it to service without documentation of the repair.

NORTH AMERICAN TRANSPORTATION CONSULTANTS, INC.
Your Total Transportation and Safety Consultants
P.O. Box 1404 • Hightstown, NJ 08520 • 609-426-0555

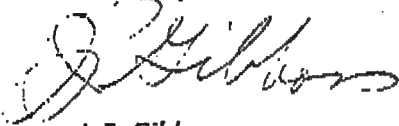
Questions:

1. If there is no documentation of a repair to the head or shell of the vessel can the motor carrier verify the suitability of the repair as noted in 180.407(b) by having the CTMV tested under 180.407(g)(1)(iv) as directed in that regulation and maintain that test on file for inspection and review as required?
2. Once the RI completes the 180.407(g) test and certifies on the documentation required in 180.417(b) that the *CTMV meets the requirements of the DOT specification identified on the report*, the CTMV is returned to full hazardous materials specification service. Is there any additional requirement in the HMR which would prohibit such a CTMV from returning to specification hazardous material service if all other test and inspections are current?
3. If the requirements of 180.407(b) are not acceptable to verify repairs for which no documentation is available how should a carrier handle returning the CTMV to hazardous material specification service?

These questions are extremely critical to a current appeal being considered by the CSO of PHMSA and as such request is respectfully made to expedite a reply to these questions. The impact to the entire bulk transportation industry may be extreme if the understandings presented in this document are wrong. This is the way the entire industry including RIs have functioned for decades.

Thank you for your time and assistance in this matter. If you have any questions feel free to contact me at our New Jersey office at (609) 426-0555.

Sincerely Yours,



J. P. Gibbons
President

cc: Tim Wiseman