U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

February 19, 2021

Geoff Owen
Director, Marine Operations
Port of Portland
7200 NE Airport Way
Portland, OR 97208

Reference No. 20-0055

Dear Mr. Owen:

This letter is in response to your July 31, 2020 request for clarification regarding the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the definition of the "hazmat employer" at the Port of Portland ("the Port"). In your letter, you reference ongoing discussions between the Port, the state of Oregon, and federal agencies regarding the Port's responsibility for training and recordkeeping of personnel that load and unload hazardous materials (hazmat) cargoes.

In your letter, you seek clarification as to who is the "hazmat employer" responsible for training and recordkeeping for those who load and unload hazmat cargoes at Terminal 6. According to the information you provided, the Port contracts with third parties for maintenance of the cranes, cargo handling equipment, and the provision of loading and unloading services at Terminal 6 of the Port facility. Vessel and rail carriers may also contract with the Port and arrange for these third parties to provide cargo handling services. In such cases, the third parties act on behalf of the carriers to perform functions that are subject to the HMR. You also indicated that vessel and rail carriers can work (contract) directly with the third parties providing cargo handling services, contract with a different third party (e.g., a stevedore) of their choosing, enter a collective bargaining agreement with a labor union representing dock workers, and/or employ labor directly for cargo handling services. You stated that no Port employees are engaged in the loading or unloading of hazmat cargoes, packing hazmat in containers, preparing labels or shipping papers or any other pre-transportation functions described under the HMR. Additionally, you explained that the Port does not engage in the direct selection, hiring, supervising, or directing of personnel handling hazmat.

Please note that our response below is limited to the scope of the HMR and the specific circumstances identified in your letter. Additionally, this response does not relieve the Port from the applicability of the HMR for other hazmat functions it may perform or functions performed in association with other federal requirements, such as the Port's obligations under 33 CFR Part 126. These include, but are not limited to, those responsibilities and requirements

the Port must observe and fulfill as the holder of a general permit for handling dangerous cargo under 33 CFR § 126.27.

In accordance with the HMR, any person who performs a hazmat function subject to the HMR is responsible for complying with the requirements of the HMR applicable to performance of that function. Based on the information provided in your letter, third parties providing hazmat cargo handling services are responsible for complying with the training and recordkeeping requirements of § 172.704 as "hazmat employers." It is noted, however, that the Port may be held responsible for non-compliance with the HMR at its facilities as a holder of the general permit under 33 CFR § 126.27. The degree of regulatory liability is determined on a case-by-case basis, and is dependent on the facts of the specific situation.

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

Sincerely,

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

From: Foster, Glenn (PHMSA)
To: Dodd, Alice (PHMSA)
Cc: DerKinderen, Dirk (PHMSA); Kelley, Shane (PHMSA); Nickels, Matthew (PHMSA)
Subject: FW: 2020-07-31 Request for Guidance Letter from The Port of Portland
Date: Friday, July 31, 2020 2:46:21 PM
Attachments: 2020-07-31 Request for Guidance from PHMSA - T6 HMR - Final.pdf

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Alice,

Please have the attached checked in and assigned to the next Specialist in the rotation. Please include Shane's below instructions when you send the assignment of the Interp email to the Specialist and again in the narrative section of the Interp record in FMP.

Thanks,
Glenn

From: Kelley, Shane (PHMSA)
Sent: Friday, July 31, 2020 2:38 PM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>; DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>
Cc: Nickels, Matthew (PHMSA) <Matthew.Nickels@dot.gov>
Subject: Fwd: 2020-07-31 Request for Guidance Letter from The Port of Portland

Please have this logged and let's coordinate directly with Christina as we move ahead. Flag this one for Director review please.

Thanks

Get Outlook for iOS

From: Tackett, Christina (PHMSA) <christina.tackett@dot.gov>
Sent: Friday, July 31, 2020 2:33 PM
To: Kelley, Shane (PHMSA)
Subject: FW: 2020-07-31 Request for Guidance Letter from The Port of Portland

Christina L. Tacket
Assistant Chief Counsel, Office of Chief Counsel

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the named recipient(s) above and may contain information that is privileged, confidential, attorney work product or otherwise legally protected. If you have received this message in error, or are not the named recipient(s), please immediately notify me and permanently delete this e-mail message and any attachments from your workstation and/or network mail system.

From: Wonnacott, Terri [mailto:Terri.Wonnacott@portofportland.com]
Sent: Friday, July 31, 2020 2:21 PM
To: Tackett, Christina (PHMSA) <christina.tackett@dot.gov>; Jeremy.C.Smith@uscg.mil; Frank, Jeffrey (FRA) <jeffrey.frank@dot.gov>; Hubbell, Raymond (FRA) <Raymond.k.hubbell@odot.state.or.us>; Whitley, Earl (PHMSA) <earl.whitley@dot.gov>; tmccarthy@harborindustrial.com; mfudurich@harborindustrial.com; JHunter@perkinscoie.com
Cc: Orf, Nathan <Nathan.Orf@portofportland.com>; Pippenger, Dan <Dan.Pippenger@portofportland.com>; Owen, Geoff <Geoff.Owen@portofportland.com>; Akre, John <John.Akre@portofportland.com>
Subject: 2020-07-31 Request for Guidance Letter from The Port of Portland

Attached is a letter I'm sending on Geoff Owen's behalf. Please let me know if I can do anything else.

Thank you,

Terri L. Wonnacott
Legal Assistant III
Legal Division – PDX
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www.portofportland.com