U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

March 10, 2023

James A. Perkins
Larson Berg & Perkins PLLC
105 North Third Street, P.O. Box 550
Yakima, WA 98907

Reference No. 22-0062

Dear Mr. Perkins:

This letter is in response to your April 21, 2022, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to storage incidental to transportation as it relates to rail tanks cars stored on private rail siding. Specifically, you believe that the clarification offered in letter of interpretation (LOI) Reference Number (Ref. No.) 20-0026 conflicts with the responses PHMSA provided in LOI Ref. Nos. 05-0313 and CHI-10-004. In short, these three letters provide clarification regarding whether rail tank cars involved in transloading operations are in transportation and subject to the HMR. It is your understanding that these letters concern the same set of facts and therefore the clarification offered in LOI Ref. No. 20-0026 is wrong. Specifically, you ask PHMSA to clarify its position on whether hazardous materials in a rail tank car stored on a private track at a transloading facility for 2-3 days is subject to the HMR, when the shipping papers specifically disclose that the rail tank car has not yet reached the final customer destination. PHMSA believes that these letters involve different factual scenarios and do not conflict.

LOI Ref. No. 20-0026

In LOI Ref. No. 20-0026, the requestor asks whether the storage of rail tank cars on private track meets the definition of "storage incidental to movement." PHMSA answers that, as described in the requestor's scenario, the storage on private track does not meet the definition of "storage incidental to movement."

The scenario involves rail cars delivered to a private track at a transloading facility and stored for several days before they are unloaded from the rail cars into cargo tank motor vehicles for delivery to a customer. Specifically, PHMSA states that once the rail cars are delivered to the private track of the designated consignee for the rail movement, transportation is considered to have ended, even if the hazardous material is described as a through-shipment to another destination.

This aligns with the HMR, which provide an exception for the storage of rail cars on private track. Section 171.1(d)(3) plainly states that that the HMR do not apply to the "storage

of a rail car on private track." This exception overrides the statement in Section 171.1(c)(4)(i)(A) that "storage incidental to transportation" includes storage at the destination at a transloading facility, provided the original shipping documentation identifies the shipment as a through-shipment. Once the tank cars are delivered to the private track, transportation is considered to have ended. Transportation would resume when the hazardous material is prepared for shipment to another destination. As stated in the interpretation, "the HMR apply to the pre-trip functions performed for the next mode of transportation for the hazardous material" – which would include transloading the hazardous material to cargo tank motor vehicles.

LOI Ref. No. 05-0313

In LOI Ref. No. 05-0313, the requestor asks if temporary storage of a railroad car containing hazardous material on a "leased railroad spur" is considered to be in transportation. PHMSA answers that, in the scenario described, "the storage of the hazardous material in a railcar located on a leased railroad spur is considered to be 'in transportation' for purposes of the HMR."

The scenario involves a shipment of Class 3 material carried in cargo tank motor vehicles via public highway to private track, where it is transloaded from cargo tank motor vehicles to a rail car that is then transported to a leased railroad spur and stored for a period of one to three days before being picked up by the carrier and transported to its final destination.

LOI Ref. No. 05-0313 is distinguished from LOI Ref. No. 20-0026, in that it does not involve storage of a rail car on private track.[1] In LOI Ref. No. 05-0313, the rail car is stored on track described as a "leased railroad spur," and based on the limited description from the incoming request, it is not clear that this is "private track." [2]

The hazardous material has left a private rail yard before moving to the "leased railroad spur." Based on the incoming letter, PHMSA did not have enough information to definitively say whether the lease provided for exclusive use and control by the lessee, in order to meet the definition of private track. Thus, the interpretation treats the "leased railroad spur" as non-private track.

The HMR apply to the movement of hazardous material from a private rail yard to the leased railroad spur, and to the storage on non-private track. Without the private track exception, LOI Ref. No. 05-0313 correctly concludes that storage at a transloading facility on non-private track is considered storage incidental to movement.

LOI Ref. No. CHI-10-004

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[1] Section 171.8 defines "private track or siding" as (i) track located outside of a carrier's right-of-way, yard, or terminals where the carrier does not own the rails, ties, roadbed, or right-of-way, or (ii) track leased by a railroad to a lessee, where the lease provides for, and actual practice entails, exclusive use of that trackage by the lessee and/or a general system railroad for purpose of moving only cars shipped to or by the lessee, and where the lessor otherwise exercises no control over or responsibility for the trackage or the cars on the trackage.

[2] PHMSA has previously stated that track or siding is not considered private if a railroad exercises any responsibility for or control over the trackage or the rail tank cars on the trackage. 68 FR 61920-61922 (Oct. 30, 2003).

In LOI Ref. No. CHI-10-004, the requestor asks whether transfer operations on track it owns (private track) are "transloading" and subject to the HMR. PHMSA answers that operations at the transfer facility which fall within the definition of "transloading" are "storage incidental to movement," and are subject to the HMR, and that operations that do not meet the definition of "transloading" would not be "storage incidental to movement" and would not be subject to the HMR.

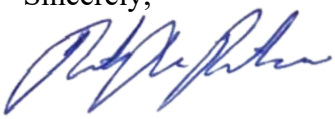
You noted in your request that this interpretation states storage incidental to movement includes storage between the time the carrier takes possession until the shipment is "delivered to the destination indicated on shipping papers or other documentation."[3] A shipping paper showing through-shipment is a strong indicator that a shipment is still in transportation. However, in LOI Ref. No. 20-0026, PHMSA stated that it is not sufficient to overcome the private track exception for rail cars in §171.1(c) and (d)(3). PHMSA found that "[o]nce the tank cars are delivered to the private track of the designated consignee for the rail movement, transportation is considered to have ended, even if the hazardous material is described as a through-shipment to another destination."

LOI Ref. No. CHI-10-004's clarification of what constitutes transloading is largely irrelevant to the facts presented in LOI Ref. No. 20-0026. PHMSA affirms that when the hazardous material is transloaded to the cargo tank motor vehicles on private track, the HMR will apply. LOI Ref. No. 20-0026 states "[t]he storage of hazardous material in the tank car on private track is not subject to the HMR, but the HMR apply to the pre-trip functions performed for the next mode of transportation for the hazardous material." Transloading the hazardous material from the rail cars to cargo tank motor vehicles is a transportation function and is subject to the HMR. However, the storage of the rail cars on private track from the time of delivery, up until transloading begins, is not subject to the HMR, because of the private track exception.

In sum, the three LOIs concern different sets of facts. Neither LOI Ref. Nos. 05-0313 nor CHI-10-004 conflict with LOI Ref. No. 20-0026 because the exception for the storage of rail cars on private track distinguishes the scenario in LOI Ref. No. 20-0026 from those contemplated in earlier interpretations.

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

[3] 68 Fed. Reg. at 61920

# LARSON BERG & PERKINS PLLC

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Casey
22-0062

Our File: 5593.002

April 21, 2022

**VIA EMAIL: VASILIKI.TSAGANOS@DOT.GOV**

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF CHIEF COUNSEL
**Attn: Vasiliki Tsaganos**
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Conflicting Opinion Letters

Dear Ms. Tsaganos:

On behalf of several "transportation" clients of our firm who have been provided with a copy of a recent May 21, 2020 "opinion/interpretation" letter authored by Mr. Dirk Der Kinderen (Kinderen), I am writing to you because based on our reading, his letter is facially inconsistent in its statements, with two prior "opinion/interpretation" letters which were previously issued by the Pipeline and Hazardous Materials Safety Administration.

The first issued letter was authored by Mr. John A. Gale, then Chief of Standards Development for the Office of Hazardous Materials Standards, dated February 27, 2006 (see attached **Exhibit 1**). The second August 23, 2010 letter was issued by Mr. Bizunesh Scott for Mr. Frazer Hilder, who was then employed by the Office of Chief Counsel (but whom we understand has since retired).

Turning first to attached letter **Exhibit 1**, the letter is clear in stating that a "detached" rail car containing a Class 3 chemical, which is located "on a leased railroad spur for a period of 1-3 days before it is picked up by the rail carrier and transported to its final destination" is considered to be "in transportation" for purposes of the federal government's Hazardous Materials Regulations (HMR), 49 C.F.R. § 171.1(c).

The letter goes on to state that "[s]torage incidental to movement" includes "storage at a transloading facility" until the particular container (here tank car) is physically delivered to the destination shown "on a shipping document, package marking, or other medium."

In 2010, this same "opinion/interpretation" of the HMR's was again confirmed by attached letter **Exhibit 2**.

Specifically on page 1, this second letter states that under "[f]ederal hazardous material transportation law, 49 U.S.C. § 5101 *et seq*.," and the implementing HMR's found at 49 C.F.R. parts

171-180 "the movement of property and loading, unloading, or storage incidental to the movement" is defined to be a "transportation" covered by the HMR's.

In the first paragraph on page 2 of letter **Exhibit 2**, the letter again confirms that "storage at a transloading facility, provided the original shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material" is considered to be part of the HMR covered act of "transportation". (49 C.F.R. § 171.1(c)(4)(i)(A)).

The letter goes on to say that not only is the temporary "storage" of a cargo tank in transit to its final destination covered by the HMR's, but any "transloading" which may occur from a tank car to a truck is also covered by the HMR's.

In this regard, attached letter **Exhibit 2** also specifically states "transloading" is defined as "the transfer of a hazardous material by any person from one bulk packaging to another bulk packaging, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packing for purposes of continuing the movement of the hazardous material in commerce." (49 C.F.R. § 171.8).

At the bottom of letter page 2, the author discusses that in the Department's October 30, 2003 final rule, it was specifically explained that "storage incidental to movement" of a hazardous material "includes storage by any person between the time that a carrier takes physical possession of a hazardous material for the purpose of transporting it, until the package containing the hazardous material is delivered to the destination indicated on shipping papers or other documentation." (68 Fed. Reg. at 61920).

Turning now to the most recent May 21, 2020 "opinion/interpretation" letter issued by Mr. Kinderen (*see* attached letter **Exhibit 3**), in letter paragraph 2 , that letter inconsistently states that purportedly tank cars on a private track at a transloading facility for brief 2-3-day period (and which are not attached to a train) are not supposedly in "transportation" under the HMR's even though the shipping paperwork specifically discloses that the material has not yet reached the final customer destination. That statement directly conflicts with the following letter **Exhibit 1** statement:

> The HMR define "storage incidental to movement" to include "storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it in commerce until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium." [Emphasis added.]

It also directly conflicts with the statement made in attached letter **Exhibit 2** that "storage incidental to the movement of a hazardous material, which is part of transportation of a hazardous material in commerce", . . . does include "storage at a transloading facility, provided the original shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material." (49 C.F.R. § 171.1(c)(4)(i)(A)). [Emphasis added.]

That attached letter **Exhibit 3** is completely inconsistent with the Department's prior interpretation of the relevant regulations is then made crystal clear by the letter **Exhibit 3** statement that purportedly a tank car delivered to a private track "transloading facility" for only two or three days is not still

"storage incidental to movement", even if the shipping papers specifically identify that the material is being transported as a "through-shipment" to another destination which the "shipping document, package marking, or other medium" specifically describes. (*See* 49 C.F.R. § 171.8).

Importantly, this inconsistency in the opinion letters can have far-reaching implications. Specifically, the HMR regulations at-issue affect all intermodal operations, not just rail tank car to highway cargo tank material transfers. For example, assume an intermodal ISO container is transferred from a vessel to a holding yard at a port and two weeks later, a motor carrier arrives to continue the "through-shipment", because the vessel is no longer attached to the ISO container, does that mean, *i.e.*, Clean Air Act federal regulations apply rather than the HMR's because the ISO container was no longer "in transportation" per 49 C.F.R. § 171.1(c)?

Since attached letter **Exhibit 3** directly contradicts both the clear language of the referenced HMR's and no less than two prior "opinion/interpretation" letters issued by the Department concerning the same set of facts, to make the Department's position about its regulations clear, so that industry participants can know with certainty whether the HMR's do or do not apply to "through-shipment" containers at a transloading facility for only two or three days (when the shipping papers specifically identify that a "through-shipment" is occurring), we would ask that you now officially rescind the recently issued "opinion/interpretation" letter attached as **Exhibit 3**, Reference No. 20-0026.

Your prompt attention to this request is appreciated.

We would finally note that if upon reading the attached letters you disagree that there is a clear inconsistency in the conclusions being expressed, your explaining the basis upon which you disagree that the letters are inconsistent would be sincerely appreciated.

Very truly yours,

**LARSON BERG & PERKINS PLLC**

James A. Perkins

JAP/ssp
Enclosures

# EXHIBIT 1

U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

FEB 27 2006

Ms. Patricia E. Lin
Counsel, Environmental Practice Group
Chevron U.S.A. Inc.
1500 Louisiana Street
Houston, TX 77002

Ref. No. 05-0313

Dear Ms. Lin:

This is in response to your November 23, 2005 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if temporary storage of a railroad car containing hazardous material on a leased railroad spur is considered to be "in transportation." In addition, you ask if the shipper or carrier is financially responsible for any release during transportation. Your question pertains to the following scenario:

A shipper consigns a shipment of a Class 3 (Flammable liquid) material from a vendor's facility in Alabama to its processing plant in Mississippi. Initially, the shipment is carried in trucks via public highway to a private rail yard. The shipment is then transloaded from the trucks to a railcar. The railcar is stored on a leased railroad spur for a period of 1-3 days before it is picked up by the rail carrier and transported to its final destination.

In the scenario you describe in your November 23 letter, the storage of the hazardous material in a railcar located on a leased railroad spur is considered to be "in transportation" for purposes of the HMR. See § 171.1(c). Specifically, in the scenario you describe, the storage of the material at the rail yard is "storage incidental to movement" and subject to all applicable HMR requirements. The HMR define "storage incidental to movement" to include "storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it in commerce until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium." See § 171.8. Storage incidental to movement also includes storage at a transloading facility. See §171.1(c)(4).

Financial responsibility for a release of hazardous material during transportation is not regulated by the HMR. However, federal law does provide for civil and criminal

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174.67

penalties when a person is found to have knowingly and/or willfully violated the HMR or federal hazardous materials transportation law. See 49 U.S.C. §§ 5123 and 5124.

I hope this information is helpful.

Sincerely,

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

# EXHIBIT 2

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Office of
Chief Counsel

08/23/2010

Mr. Phil Zlaket
Director of Manufacturing
And Corporate Compliance
ACCU CHEM Conversion, Inc.
13226 Nelson Avenue
City of Industry, CA 91746

Dear Mr. Zlaket:

This responds to your April 16, 2010 letter to Frazer Hilder of my office concerning facilities operated by your company at which rail tank cars are received and the liquid hazardous materials contained in the tank cars are transferred to cargo tank motor vehicles for delivery to the ultimate recipient. You ask whether these operations constitute "transloading" and are subject to the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 C.F.R. parts 171-180.

As you describe your company's transfer operations:

1. Your company owns the track on which the transfer operations take place.

2. The "original shipper" of the hazardous material to your facility is filling an order for this material by its customer, but that shipper does not provide the rail carrier with documentation which identifies the ultimate recipient of the material. Rather, during the transfer operations at your facility, separate documentation is prepared which identifies the "original shipper as the shipper of the cargo tank containing the HM and the end user as the consignee."

3. On occasion, the original shipper of the hazardous material asks you to dilute the material with water, and you do this by adding the appropriate amount of water to the cargo tank just before transferring the hazardous material from the rail tank car to the cargo tank motor vehicle.

Federal hazardous material transportation law defines "transports" and "transportation" to mean "the movement of property and loading, unloading, or storage incidental to the movement." 49 U.S.C. § 5101(13). As explained in the HMR, storage incidental to the movement of a hazardous material, which is part of transportation of a hazardous material in commerce, does not include "storage of a hazardous material at its final destination as shown on a shipping

document," but does include "storage at a transloading facility, provided the original shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material." § 171.1(c)(4)(i)(A). "Transloading" is defined as "the transfer of a hazardous material by any person from one bulk packaging to another bulk packaging, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packaging for the purpose of continuing the movement of the hazardous material in commerce." 49 C.F.R. § 171.8.

These provisions in the HMR were adopted in PHMSA's "HM-223" rulemaking. *See* the final rules published October 30, 2003 (68 Fed. Reg. 61906), and April 15, 2005 (70 Fed. Reg. 20018). As your letter suggests, language in the preamble to these final rules helps to explain whether or not your company's operations are "transloading" subject to the HMR, as follows:

First, transfer operations that meet the definition of "transloading" in the HMR may take place on track owned by your company.

> In the April 15, 2005 final rule, we removed the words "at an intermodal facility from the definition of "transloading" adopted in the October 30, 2003 final rule because we agreed that "the location at which transloading occurs should not dictate whether the operation is regulated as a transportation function." 70 Fed. Reg. at 20020. In this manner, we "clarif[ied] that transloading is regulated under the HMR irrespective of the location at which the operation occurs." *Id.* at 20021. The language in 49 C.F.R. § 171.1(c)(4)(ii), that "[s]torage incidental to movement includes rail cars containing hazardous materials that are stored on track that does not meet the definition of 'private track or siding' in § 171.8" does not mean that the storage may not take place on a "private track or siding."

Second, unless some "original shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material" the transfer operations conducted at your facility do not meet the definition of "transloading" and are not "storage incidental to movement" of a hazardous material. 49 C.F.R. § 171.1(c)(4)(i)(A).

> In the October 30, 2003 final rule, we explained that "storage incidental to movement" of a hazardous material "includes storage by any person between the time that a carrier takes physical possession of a hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on shipping papers or other documentation." 68 Fed. Reg. at 61920. In the April 15, 2005 final rule, we agreed that "transloading is a transportation function," rather than a "pre-transportation" activity, but did not modify the condition that "the original shipping document include[] information that the shipment is a through-shipment to an identified destination." 70 Fed. Reg. at 20020.
>
> The discussion of "transloading" in these final rules recognized that a "through-shipment" may involve both rail and highway transportation. *Id.* We also recognize that the shipping documentation that accompanies the rail portion of a "through-shipment" may only show the transfer facility as the destination, but original documentation prepared by the "original shipper," before transportation has started, is considered the

only reliable evidence of a "through-shipment." The "three separate documents" you describe cannot be "taken as a whole" to constitute "original shipping documentation" of a "through-shipment" when one of these documents is prepared during the transfer operations at your facility. Under that scenario, the original shipper has the ability to select the consignee of what is, essentially, a "new" shipment by motor carrier.

Third, the dilution of the material transported to your facility by rail car, during transfer to a cargo tank motor vehicle, creates a different material and is not simply "storage incidental to movement" of a hazardous material.

> As noted above, transloading" is defined as "the transfer of a hazardous material by any person from one bulk packaging to another bulk packaging, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packaging for the purpose of continuing the movement of the hazardous material in commerce." 49 C.F.R. § 171.8. We explained in the October 30, 2003 final rule that "'transloading' is a pure transfer" of the hazardous material, and it "does not include operations that involve the transfer of a hazardous material from one packaging to another for purposes of mixing, blending, or otherwise altering the hazardous materials." 68 Fed. Reg. at 61919. Thus, the dilution that takes place at your facility is an alteration of the material delivered by the rail carrier, so that there is not a "pure transfer" from the rail car to cargo tank motor vehicles.

Finally, we also explained in 49 C.F.R. § 171.1(f)(2) that, even when the transfer operations at a facility meet the definition of "transloading" and are "storage incidental to movement" of a hazardous material, that facility may still be "subject to applicable laws and regulations of state and local governments and Indian tribes," so long as those non-Federal requirements are not preempted under the criteria set forth in 49 U.S.C. § 5125.

> In the April 15, 2005 final rule, we added a clarification to § 171.1(f) "that non-Federal entities may impose regulations on functions that are not covered by the HMR or Federal hazmat law, except where PHMSA has specifically determined that the regulation of the hazardous materials-related function is not necessary. Appellants correctly note that PHMSA has in some cases determined that safety or security regulations may not apply to all hazardous materials or to specific types of shipments." 70 Fed. Reg. at 20025. We also noted that, "separate from the preemption criteria in 49 U.S.C. 5125, a non-Federal requirement affecting transportation, including the transportation of hazardous materials, may also be preempted under the commerce clause of the United States Constitution or other statutes such as 49 U.S.C. 20106, 31141." 70 Fed. Reg. at 20024. Thus, a state or local requirement applying to hazardous materials at a transfer facility, that constitutes an "obstacle" to accomplishing and carrying out Federal hazardous material transportation law or the HMR, would be preempted – even if the non-Federal requirement did not directly apply to a transportation activity.

In sum, operations at a transfer facility that fall within the definition of "transloading" are "storage incidental to movement" of the hazardous material and subject to requirements in the HMR, but state or local requirements on the transfer facility may not be preempted when those non-Federal requirements do not apply to the subject matters in 49 U.S.C. § 5125(b)(1) and are

not otherwise an "obstacle" to accomplishing and carrying out Federal hazardous material transportation law and the HMR. Conversely, operations at a transfer facility that do not meet the definition of "transloading" would not be "storage incidental to movement" of the hazardous material and would not be subject to requirements in the HMR, but those non-Federal requirements may be preempted if their practical effect would conflict with requirements in the HMR on the subject matters in 49 U.S.C. § 5125(b)(1) or otherwise create an "obstacle" to accomplishing and carrying out Federal hazardous material transportation law and the HMR.

I hope this information is helpful. If you need further assistance, you may contact Mr. Hilder at 202-366-4400.

Sincerely

Bizunesh Scott
Chief Counsel

# EXHIBIT 3

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

May 21, 2020

Jeff R. Thomas
STAR Consulting
85 S. LaVerne Street
Fallon, NV 89406

Reference No. 20-0026

Dear Mr. Thomas:

This letter is in response to your March 23, 2020, email and subsequent email correspondence requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to storage incidental to movement. Specifically, you describe a scenario involving intermodal transportation and ask whether, in the specific scenario you describe, the storage of rail tank cars on private track meets the definition of "storage incidental to movement."

In your scenario, a hazardous material is transported by rail in tank cars from a manufacturing plant to a transloading facility. The tank cars are delivered to a private track at the transloading facility, and after a 2-3 day period, are unloaded from the tank cars into cargo tank motor vehicles for delivery to a customer. You ask whether the tank cars containing hazardous material are considered to be in "storage incidental to movement" (see §§ 171.1(c)(4) and 171.8) during the 2-3 day period they are stored on private track at the transloading facility, and therefore subject to the requirements of the HMR.

The answer is no. As described in your scenario, the storage on private track does not meet the definition of "storage incidental to movement." Once the tank cars are delivered to the private track of the designated consignee for the rail movement, transportation is considered to have ended, even if the hazardous material is described as a through-shipment to another destination. The storage of hazardous material in the tank car on private track is not subject to the HMR, but the HMR apply to the pre-trip functions performed for the next mode of transportation for the hazardous material.

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:** | DerKinderen, Dirk (PHMSA) |
| **To:** | Hazmat Interps |
| **Subject:** | FW: Follow up |
| **Date:** | Friday, June 24, 2022 8:33:21 AM |
| **Attachments:** | Office of Chief Counsel ltr 04-21-22.pdf |

Alice,

Please log into the system and assign to someone in PHH11.

Thanks,
Dirk Der Kinderen
Chief, Standards Development Branch
PHMSA
202-366-4460 (desk)
202-365-4684 (cell)

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**From:** Tsaganos, Vasiliki (PHMSA) <vasiliki.tsaganos@dot.gov>
**Sent:** Thursday, June 23, 2022 4:06 PM
**To:** jim@lbplaw.com
**Cc:** DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Horsley, Adam (PHMSA) <adam.horsley@dot.gov>; Tsaganos, Vasiliki (PHMSA) <vasiliki.tsaganos@dot.gov>
**Subject:** Follow up

Dear Mr. Perkins,

Thank you for your inquiry/ letter dated April 21, 2022. I have referred your inquiry and the attached letter to our Standards and Rulemaking division to be handled as a request for a letter of interpretation. That office will reach out to you soon to confirm that they have begun work on this request. In the meantime, if you need additional information, please reach out to Dirk DerKinderen, Chief of Standards Development. Mr. DerKinderen can be reached by phone at (202) 366-4460, or by email at Dirk.DerKinderen@dot.gov. I hope this information is helpful and apologize for the delay in acknowledging your letter.

Many thanks,

**Vasiliki Tsaganos**
Deputy Chief Counsel, Office of Chief Counsel

US Department of Transportation
**Pipeline and Hazardous Materials Safety Administration**
1200 New Jersey Avenue, S.E., Washington, D.C. 20590
Office: 202.366.0639 ◊ Facsimile: 202.578.9223