U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

MAR 2 3 2000

Ms. Becky Clark
Traffic Analyst
Transportation Department
Georgia-Pacific Corporation
Highway 273 West
Cedar Springs, Georgia 31732

Ref. No. 99-0279

Dear Ms. Clark:

This responds to your letter of October 8, 1999, requesting clarification of the attendance requirements for unloading tank cars under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the interpretation concerning attendance requirements for tank car unloading published in the *Federal Register* on February 28, 1990, remains in effect.

The answer is yes. Electronic monitoring of tank car unloading to comply with the attendance requirements in § 174.67(i) of the HMR is permitted provided the conditions listed in your letter are met. You need not have an exemption to utilize electronic sensors to monitor tank car unloading operations.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Thomas G. Allan
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

990279

174.67

Georgia-Pacific Corporation

Containerboard & Packaging Division
Cedar Springs Operations
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Telephone (912) 372-5481

October 8, 1999

Karim
§ 174.67
99-0279

Mr. Edward T. Mazzullo, Director
Office of Hazardous Material Standards
U. S. DOT / RSPA (DHM-10)
400 7th Street, S. W.
Washington, DC 20590-0001

Dear Sir:

Please refer to the Federal Register, Monday, February 28, 1990, specifically the interpretation of "attendance" provided for Hercules Incorporated, Wilmington, Delaware.

Hercules requested DOT to compare its proposed system to the attendance requirements of 174.67 and 177.834. The Hercules system proposed to include electronic sensors, which upon detection of minute levels of fumes or vapors would sound an alarm and shut down the unloading process. Also, periodic checks of the system would be conducted by workers in the general area.

Dot responded that the system proposed by Hercules meets the requirements of 174.67 if:

- An employee is made responsible for unloading and is familiar with the nature and properties of the material being unloaded.
- The employee responsible for unloading is instructed in the procedures to be followed during unloading and in the event of an emergency, and has the authority and ability to halt the flow of product immediately and take emergency action.
- In the event of an emergency, the system must be capable of immediately halting the flow of product or alerting the employee responsible of unloading.
- The monitoring device will provide immediate notification of any malfunction to the person responsible for unloading, or the device is checked hourly for malfunctions, and
- In case of malfunctioning, the device will no longer be relied upon and instead the individual responsible for unloading will constantly observe the unloading.

Please advise if the interpretation of attendance has changed in any way since the February edition of the 1990 Federal Register. Is electronic monitoring of Sodium Hydroxide, Solution tank cars permitted as long as all the requirements stated above are met? Is an exemption required or can we install a monitoring system based on the Hercules Interpretation?

Thank you for your consideration of this matter.

Becky Clark

Becky Clark, Traffic Analyst
Georgia-Pacific Transportation Department

BC/tmd

Enc.

[Int. No. 87-3-RSPA]

Issued: Feb. 17, 1987.

Source: David H. Jett, Esq., Keller and Heckman, Washington, DC.

Facts: David H. Jett requests an interpretation to clarify paragraphs (b) and (d) of 49 CFR 173.386. Section 173.386 defines etiologic agents and the regulations applicable to their transportation. Paragraph (b) specifically states: "* * * except as provided in paragraph (d), no person may ship any material, including * * * a biological product, containing an etiologic agent unless this material is packaged and prepared for shipment in accordance with § 173.24 and [the] other applicable regulations of this subchapter." Paragraph (d), which excepts certain substances from part 173 regulations, states:

> The following substances are not subject to any [requirements of this subchapter if the items as packaged do not contain any material otherwise subject to the requirements of Parts 170 through 189 of this subchapter:
>
> * * * * *
>
> (2) Biological Products
> (3) Cultures of etiologic agents. * * *

Mr. Jett inquires whether pursuant to paragraph (b), biological products that include etiologic agents are subject to the packaging provisions of Part 173 or whether they are exempt from regulations under paragraph (d)?

Interpretation: Under paragraph (d), biological products that contain etiologic agents, but which do not contain another hazardous material are not subject to the packaging requirements of Part 173. There is a discrepancy between the language in paragraphs (b) and (d) of § 173.386. The applicability statement of paragraph (b) implies that biological products which contain etiologic agents are subject to the general packaging provisions of § 173.24 and the other requirements of the HMR. However, the exception provided in paragraph (d) is intended to exclude biological products that contain etiologic agents, but do not contain any other hazardous materials (e.g., formaldehyde, flammable liquid solvents). RSPA intends to address the discrepancy between paragraph (b) and (d) of § 173.386 in a future rulemaking action. Accordingly, biological products which contain etiologic agents, but no other hazardous material subject to the HMR, are not subject to the packaging requirements of part 173.

[Int. No. 87-4-RSPA]

Issued: Mar. 25, 1987.

Source: R.F. D'Onofrio, Regulations Coordinator, Hercules Incorporated, Wilmington, Delaware.

Facts: Hercules, Inc. requests an interpretation of "attendance" as contained in 49 CFR 174.67 and 177.834. Sections 174.67 and 177.834 are concerned with attendance requirements during the unloading of rail tank cars and motor vehicle cargo tanks, respectively. Section 174.67 specifically states in paragraph (i): "Throughout the entire period of unloading, and while [the] car is connected to [the] unloading device, the car must be attended by the unloader." Section 174.67(a)(1) also requires that unloading operations be "performed only by reliable persons properly instructed in unloading hazardous materials and made responsible for careful compliance with this part." Section 177.834(i) announces the general requirement that motor carrier cargo tanks must be attended at all times during loading and unloading. Furthermore, paragraph (i)(3) of § 177.834 specifically defines "attends" as:

> A person "attends" the loading or unloading of a cargo tank if, throughout the process, he is awake, has an unobstructed view of the cargo tank, and is within 7.62 meters [25 feet] of the cargo tank.

Hercules proposes to install a system that includes electronic sensors which upon detection of minute levels of fumes or vapors will sound an alarm and shut down the unloading process. Also, periodic checks of the system will be conducted by workers in the general area. Hercules requests DOT to compare its proposed system to the attendance requirements of §§ 174.67 and 177.834.

Interpretation: Hercules' proposed system may comply with the requirements of § 174.67, but it does not comply with those contained in § 177.834(i)(3). The purpose of the attendance requirement is to ensure that hazardous materials are safely loaded or unloaded and that in the event of an emergency, such processes are rapidly halted. The key elements of the attendance requirements in §§ 174.67 and 177.834 are that the person or mechanical device monitoring the loading process be able to determine if a condition requiring cessation of operation occurs, and if so, that there is the ability to stop the operation.

The system proposed by Hercules meets the requirements of §§ 174.67(a)(1) and 174.67(i) if: (1) An employee is made responsible for unloading and is familiar with the nature and properties of the material being unloaded; (2) the employee responsible for unloading is [illegible] in the procedures to be followed [illegible] unloading and in the event of an emergency, and has the authority and ability to halt the flow of product immediately and take emergency action; (3) in the event of an emergency, the system must be capable of immediately halting the flow of product or alerting the employee responsible for unloading; (4) the monitoring device will provide immediate notification of any malfunction to the person responsible for unloading, or the device is checked hourly for malfunctions; and (5) in case of malfunction, the device will no longer be relied upon and instead the individual responsible for unloading will constantly observe the unloading.

Hercules' proposed system is acceptable under § 174.67, assuming that upon detection of fumes or vapors the monitoring system warns workers of the defect and automatically stops the unloading process. However, § 177.834(i)(3) specifically requires a "person" to have a continuous unobstructed view within "twenty-five feet" of the cargo tank. The motor vehicle attendance requirements are more specific than those for rail cars, because of the greater likelihood that motor vehicles will be unloaded in populated areas. Thus, an electronic monitoring device with periodic checks by workers in the "general area" does not comply with the specific attendance requirements of § 177.834(i)(3), because it utilizes non-human monitoring.

[Int. No. 87-5-RSPA]

Issued: June 2, 1987.

Source: Gordon Rousseau, Senior Technical Advisor, Lawrence W. Bierlein, P.C., Washington, DC.

Facts: Request for an interpretation of 49 CFR 173.12, regarding how § 173.12 applies to hazardous substances and poisonous materials, particularly poisonous liquids that are toxic-by-inhalation. Paragraph (a) of § 173.12 states:

> "Waste material * * * are excepted from the specification packaging requirements of this subchapter if packaged in combination packagings in accordance with this section * * *. In addition, a generic proper shipping name from § 172.101 may be used in place of specific chemical names, when two or more waste materials in the same hazard class are packaged in the same outside packaging ["labpacks"], provided the waste materials are chemically compatible.

The request for interpretation involves four specific questions concerning § 173.12: (1) Does § 173.12 provide an exception to the additional poison and hazardous substance identification