



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

SEP 23 2008

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Mr. Jim Powell  
Transportation Development Group  
2023 E. Sims Way, Suite 372  
Port Townsend, WA 98368

Ref. No. 08-0084

Dear Mr. Powell

This is in response to your March 24, 2008 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they apply to a “hazmat employer” and a “hazmat employee.”

In your letter, you describe a scenario consisting of two companies: Company A and Company B. Company A is a third-party logistics provider (freight forwarder) that has employees who prepare hazardous materials shipments for transportation at Company B’s facility. Company B is a manufacturer and shipper of hazardous materials. In addition to its own employees, Company B also supervises the employees of Company A in hazardous materials functions.

You ask whether Company A or Company B employees are “hazmat employees.” You ask which company is a “hazmat employer.” You ask whether it is Company B’s responsibility to train the employees of Company A that it supervises. You ask whether it is the responsibility of Company A to evaluate Company B’s training of its employees by Company B.

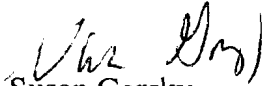
As defined in § 171.8, a “hazmat employee” is a person who is employed on a full-time, part time, or temporary basis, and who in the course of such employment directly affects hazardous materials transportation safety. Section 171.8 also defines a “hazmat employer” to mean a person who employs or uses at least one hazmat employee on a full-time, part time, or temporary basis, and who: (1) transports hazardous materials in commerce; (2) causes hazardous materials to be transported in commerce; or (3) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous materials in commerce. As specified in § 172.702, a hazmat employer must ensure that each of its hazmat employees is trained in accordance with the training requirements prescribed in the HMR.

Under your scenario, Company A is a hazmat employer, responsible for ensuring that Company A's hazmat employees are trained in accordance with the training requirements in Subpart H of Part 172 of the HMR. Likewise, Company B is a hazmat employer, responsible for ensuring that Company B's hazmat employees are trained in accordance with Subpart H of Part 172. In addition, Company B is responsible for ensuring that the Company A employees it supervises are trained in accordance with Subpart H of Part 172. It is important to note that the HMR do not specify who must actually perform the training, but rather provide that the hazmat employer must ensure that each of its hazmat employees is trained. Thus, Company B could assume responsibility for training Company A's employees through a contractual arrangement with Company A.

It should also be noted that the HMR do not prevent Company A from reviewing Company B's training methods, particularly as they affect Company A's hazmat employees. However, such a review does not relieve Company B of its responsibility as a hazmat employer to ensure that the Company A employees it supervises are properly trained.

I hope this information is helpful.

Sincerely,



Susan Gorsky,  
Acting Chief, Standards Development  
Office of Hazardous Materials Standards



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Foster  
§171.8  
§172.702  
Definitions  
08-0084

Monday, March 24, 2008

Mr. Edward T. Mazzullo  
RSPA Office of Hazardous Materials Standards  
400 7th Street S.W. DHM10  
Washington, DC 20590-0001

Dear Mr. Mazzullo:

I am requesting an interpretation of the concept of the term "Hazmat Employer" as it relates to one company actually paying and "employing" the worker, while another company controls the day to day activities.

Here's the specific example:

Company A: A Third Party Logistics provider ("freight forwarder") who has their employees work out of a customers shipping location helping to prepare shipments that are being shipped out.

Company B: A manufacturer and shipper of hazardous materials and a "hazmat employer". This company supervises it's own employees in hazardous materials function as well as the employees of Company A -- the logistics provider who works on their dock.

All workers on the dock packing shipments of hazmat and loading those hazmat shipments on company A (and other) vehicles are hazmat employees. But who is the "hazmat employer"?

It would seem that both companies are hazmat employers but I'm not sure about Company B's responsibility for training Company A's employees.

Is it correct to assume that Company A, the Logistics employer -- is indeed the "hazmat employer" and must evaluate the appropriateness of Company B's training for its employees working under their supervision?

Finally, while we're on the subject, is this any difference for a temporary staffing agency who provides employees during peak seasons to perform warehousing and shipping functions that put them in the role of a hazmat employee. Is the "temp agency" (since they write the paychecks and provide the insurance) the hazmat employer even though their temporary laborers are performing job functions supervised by the temp agency's customer? Thanks.

Sincerely,

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