



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAR 15 2017

Mr. Rod Johnson
Enoch Kever PLLC
5918 W. Courtyard Drive, Suite 500
Austin, TX 78730

Reference No. 16-0208

Dear Mr. Johnson:

This letter is in response to your December 13, 2016, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the definition of an "offeror" of hazardous materials and the registration requirements under § 107.601. You state that your client is a producer of crude oil that sells to a purchaser. Under contract, ownership of the oil passes to the purchaser as it flows through the valve on your client's storage tank. It is your understanding that the purchaser is the "offeror" based on performance of a variety of functions, including certain hazardous material pre-transportation functions. Specifically, you ask whether the purchaser of the crude oil, your client, or both, are considered an "offeror" of hazardous materials and consequently required to register under § 107.601.

Based on the information provided in your letter, the purchaser is considered an offeror of hazardous materials and is required to register accordingly. Further, it is the opinion of this Office that your client is not an offeror as defined by the HMR and is not required to register under § 107.601. As defined in § 171.8, a "person who offers" or "offeror" means any person who does either or both of the following: (1) performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. Any person that is determining the hazard class of a hazardous material, selecting a packaging, filling a package, securing a closure, or marking a package to indicate that it contains a hazardous material, etc. is also considered an offeror (see § 171.1(b)).

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

Sincerely,

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division



Stevens
171.810
Definition and Abbreviation
16-0208

Rod Johnson
Direct: (512) 615-1213
rjohnson@enochkever.com

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

Via Email: Infocenter@dot.gov

RE: Request for Interpretation
Definition of "Offeror" & Applicability of HMR Registration Requirements

Dear Sir or Madam:

I respectfully request an interpretation of the applicability of the Department of Transportation Pipeline and Hazardous Materials Safety Administration ("DOT" or "Department") Hazardous Materials Regulations ("HMR") registration requirements to a confidential client of this firm ("Client"). Specifically, I request the Department's interpretation as to whether, under the circumstances presented below, the Client is an "offeror" under 40 CFR §171.8 and, thereby, is subject to the registration requirements under 40 CFR Part 107, Subpart G.

Background

Our Client is a producer and owner of petroleum crude oil ("crude oil")¹ which the Client stores in tank batteries that the Client also owns. The Client sells the crude oil from its tank batteries pursuant to sales contracts with various buyers (the "Buyers"). The contracts provide that delivery takes place, and title to the crude oil passes from the Client to the Buyer, when the crude oil passes the outlet flange of the Client's storage tank(s) to the receiving truck(s) of Buyer or Buyer's designated agent. Arrangements for transportation of the crude oil are made by the Buyer or Buyer's designated agent. Our Client does not perform, and our Client is not responsible for performing, any of the pre-transportation functions identified at 49 CFR § 171.1(b).

¹ "Petroleum crude oil" is designated as a hazardous material under the Hazardous Materials Table at 40 CFR § 172.101.

Definition & Interpretation of “Offeror”

Title 40 CFR § 171.8 provides that a “Person who offers or offeror”² is:

Any person who does either or both of the following: (i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce. (ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

In its preamble to the final rule promulgating the definition of “offeror,” the Department clarified “that there may be more than one offeror of a hazardous material and that each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform.”³ And as to subparagraph (ii), the Department also clarified that “tender” means “that the person who offers the hazardous material for transportation makes the hazardous material physically available to the originating carrier to begin its transportation in commerce.”⁴

Based on the clarifications, our Client does not appear to be an “offeror” under subparagraph (i), because the Client does not perform, and is not responsible for performing, any of the pre-transportation functions required under the HMR. Our Client also does not appear to be an “offeror” under subparagraph (ii) merely by virtue of selling crude oil from its tanks to a Buyer, where ownership of the crude oil transfers to the Buyer at the outlet flange of the Client’s storage tanks, and where Buyer arranges for transportation and is responsible for all pre-transportation functions.

That view appears to have been addressed by the Department in a recent interpretation, DOT Ref. No. 16-0128 (attached).⁵ There, the Department addressed a situation where a producer of crude oil sells crude oil to a purchaser by contract, ownership of the crude oil transfers to the purchaser at the outlet valve on the producer’s storage tanks, and the purchaser was responsible for all HMR pre-transportation functions. Under those circumstances, the Department identified the purchaser as an “offeror.” The Department further explained that more than one offeror may exist: “[a]ny person that is determining the hazard class of a hazardous material, selecting a packaging, filling a package, securing a closure, or marking a package to indicate that it contains a hazardous material, etc. is an offeror. (See § 171.1(b)).” The fact that the Department did not identify the *producer* as an offeror under the circumstances, and rather stated that *additional offerors may exist if persons undertake one of the HMR requirements in §171.1(b)*, appears to indicate that the Department’s interpretation is that to be an “offeror” *both subparagraphs (i) and (ii)* of the definition of “offeror” require that a person must undertake or be responsible for undertaking one of the activities identified in §171.1(b).

² For simplicity, “offeror.”

³ Applicability of the Hazardous Materials Regulations to a “Person Who Offers” a Hazardous Material for Transportation in Commerce, Final Rule, 70 Fed. Reg. 43638 (July 28, 2005).

⁴ *Id.* at 43642.

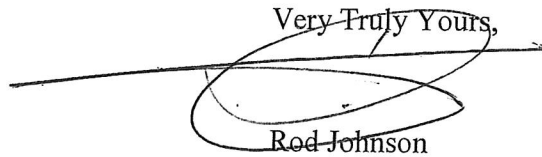
⁵ Letter from Dirk Der Kinderen, Chief, Standards Development Branch, Standards and Rulemaking Division, to Anthony Rausin, Manager, Cimarron Oil LLC, dated November 2, 2016 (Ref. No. 16-0128)

U.S. DOT
PHMSA Office of Hazardous Materials Standards
December 13, 2016
Page 3

I request your concurrence that, consistent with the general applicability requirements under 40 CFR § 171.1, a producer of petroleum crude oil operating under the circumstances presented in DOT Ref. No. 16-0128 or under the circumstances presented herein is not an "offeror" under the HMR that would be required to register under 49 CFR Part 107, Subpart G.

I will appreciate the Department's acknowledgment that it has received this request and thank you in advance for your interpretation. If you have any question, please contact me at 512-615-1213 or rjohnson@enochkever.com.

Very Truly Yours,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the left.

Rod Johnson

Attachment



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

NOV 02 2016

Anthony Rausin
Manager
Cimarron Oil LLC
9251 Brunello Ct
Bakersfield, CA 93314

Ref. No. 16-0128

Dear Mr. Rausin:

This responds to your July 26, 2016 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the definition of "offeror" as it relates to § 173.41. In your scenario, you describe a producer of crude oil that sells to a purchaser. Under contract, ownership of the oil passes to the purchaser as it flows through the valve on the (producer's) storage tank. You note your belief that the purchaser is the "offeror" based on performance of a variety of functions including certain hazardous material pre-transportation functions, e.g., loading the crude oil from a storage tank to a transport vehicle, sampling and testing of crude oil, and preparing shipping papers. You ask, in this case and based on the reasons provided, whether the purchaser of the crude oil is the "offeror" as defined in § 171.8.

Based on the information provided, the purchaser is an offeror. However, there may be multiple offerors during transportation. As defined in § 171.8, a person who offers or offeror means any person who does either or both of the following: (1) performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. Any person that is determining the hazard class of a hazardous material, selecting a packaging, filling a package, securing a closure, or marking a package to indicate that it contains a hazardous material, etc. is an offeror (see § 171.1(b)).

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

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

Ciccarone
173.41
Crude oil
16-0128

Goodall, Shante CTR (PHMSA)

From: Rivera, Jordan CTR (PHMSA)
Sent: Wednesday, July 27, 2016 5:01 PM
To: Hazmat Interps
Subject: FW: Request for Rule Interpretation
Attachments: CIMARRON OIL LLC, DOT letter.docx

Hi Shante/Alice,

Please submit this as a letter of interpretation.

Please let me know if you have any questions.

Thank you,
Jordan

From: anthony044 [<mailto:anthony044@earthlink.net>]
Sent: Wednesday, July 27, 2016 3:55 PM
To: PHMSA HM InfoCenter
Subject: Request for Rule Interpretation

Please find attached, a letter requesting a rule interpretation on CFR49 section 173.41. If you would please acknowledge receipt of this letter, I would appreciate it.

Thank you
Anthony Rausin
Manager
Cimarron Oil LLC

CIMARRON OIL LLC

9251 Brunello Ct., Bakersfield, CA. 93314

661-393-7414

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH – 10
East Building
1200 New Jersey Ave., SE
Washington, DC 20590-0001

7/26/2016

Re: Request for Interpretation of Regulations

Cimarron Oil LLC would like to request an interpretation of 49CFR section 173.41, specifically as it relates to the definition of "offeror".

Cimarron Oil LLC is a producer (the producer) of crude oil and sells that crude oil to Shell Trading, (the purchaser). Under my purchase contract, the title to the crude oil passes to the purchaser as the oil passes through the valve on my storage tank. It is my opinion that the purchaser is the offeror for the following reasons.

1. The purchaser is physically loading it's property, the crude oil.
2. The purchaser contracts with the carrier to transport the crude oil by truck.
3. The purchaser is paying for the transport of the crude oil.
4. The purchaser samples and tests the crude oil for gravity and water content.
5. The purchaser provides the carrier with the necessary information to prepare current hazmat paperwork.
6. The purchaser determines the destination of the crude oil.
7. The purchaser is responsible for all liability regarding the transport of the crude oil.

Based on the above conditions, I believe that the purchaser is the offeror in this case. Cimarron Oil LLC currently has absolutely no duties or responsibilities concerning transportation of the crude oil. The purchaser is offering the crude oil for transportation and is performing all of the pre transportation functions necessary to transport the crude oil.

In conclusion, Cimarron Oil LLC believes that Shell Trading is the offeror in this case as it relates to 49CFR section 173.41. If you would please give me an interpretation regarding this case, I would be grateful.

Sincerely

Anthony Rausin
Manager
Cimarron Oil LLC

E mail: anthony044@earthlink.net

P.S. If you would acknowledge receipt of this letter, I would appreciate it.