



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

MAY 26 2004

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

Mr. Stephen P. Nowicki
Director of Transportation Compliance
Koch Mineral Services, LLC
4111 East 37th Street North
Wichita, KS 67220

Reference No.: 04-0008

Dear Mr. Nowicki:

This is in response to your letter regarding inspection of tank cars prior to movement under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You describe the following scenario:

KHLP (Koch Hydrocarbon LP) had five full-service leased tank cars containing "Residue, last contained Petroleum Gas, Liquefied (Propylene), 2.1, UN1075" sitting idle at the Superior, Wisconsin facility of a supplier not corporately related to any Koch Industries, Inc. company. All five cars had been at this facility for approximately six weeks when, through no action of KHLP, they were tendered back to the serving carrier, BNSF, with no stated destination. The Superior facility did not tender a bill of lading or other shipping paper to the railroad. When KHLP ultimately decided on the next loading point it asked the Superior facility to bill the cars to that point. The Superior facility refused to provide shipping documents and, therefore, KHLP prepared the necessary documentation.

We note concerning your letter that the tank cars in question were not "empty;" rather, they contained residue amounts of Liquefied Petroleum Gas. You ask these questions:

Q1. Did KHLP have a duty to physically inspect the railcars to meet the requirements of 173.31(d)?

A1. Yes, once KHLP decided to prepare the shipping documents, it became an offeror and was responsible to "determine that the tank car is in proper condition and safe for transportation."

Q2. Hypothetically, would the Superior facility have a duty to physically inspect the railcars according to 173.31(d) before "releasing" them to a railroad without billing?



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173.31

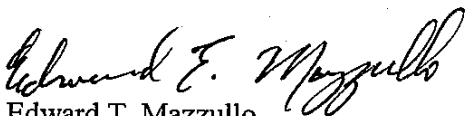
A2. Yes. When the Superior facility tendered the cars back to the railroad, it was responsible as an offeror to make the same determination that KHL P had to make when KHL P decided to prepare the shipping documents. In fact, given the facts as stated by you, when the Superior facility "released" the cars without shipping papers, it was in violation of § 172.200 *et seq.* Further, and again relying on the facts as you state them, it appears that BNSF was in violation of § 174.24 for accepting and moving the cars without receiving shipping papers.

Q3. If the Superior facility did physically inspect the cars, would KHL P also have to inspect the cars as the most current offeror of the empty tank cars?

A3. The HMR place a duty on the offeror of a tank car containing hazardous materials to determine that the car is in proper condition and safe for transportation. Section 173.31(d) lists the minimum external visual inspection that must be performed prior to offering the car. Under the HMR, more than one entity may be responsible for the performance of offeror functions prior to offering a shipment for transportation. In the scenario you describe, if the Superior facility physically inspected the cars while KHL P prepared the shipping documentation for the cars, both entities would be considered offerors for purposes of the HMR and would be responsible for performing their respective offeror functions in accordance with the HMR. In this case, KHL P would not be required to perform the physical inspection of the cars required under § 173.31(d).

I trust this satisfies your request.

Sincerely,



Edward T. Mazzullo
Director, Office of Hazardous Materials
Standards

To: 'Office of Hazmats;	From: Kelly Nebergall, ISA Admin.
Company: Office of Hazmats; DHM-10	Company: Koch Legal Department
Fax Number: 1-202-366-3012	Fax Number: 316-828-9063
Phone Number:	Phone Number: 316-828-6060

Subject: RE: Question: Use of Tank Cars;
Date: Tuesday, January 13, 2004
Pages: 2

Corbin
§ 173.31
Tank Cars
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Can you advise when you expect to respond to the below request?

-----Original Message-----

From: Nowicki, Steve
Sent: Monday, December 22, 2003 10:12 AM
To: 'Office of Hazmats; DHM-10'
Subject: RE: Question: Use of Tank Cars; Examination before shipping

The below request was faxed to DHM-10 on December 8th. Have you had a chance to consider this request?

-----Original Message-----

From: Nowicki, Steve
Sent: Monday, December 08, 2003 12:10 PM
To: 'infoctr@rspa.dot.gov'
Subject: Question: Use of Tank Cars; Examination before shipping

Koch Hydrocarbon LP (KHLF) has 3 questions with respect to the requirement in 49 CFR part 173.31 (d) and its applicability to a specific situation we encountered. The questions are identified at the end of this email.

The requirement: 173.31 (d) says: (1) No person shall offer for transportation a tank car containing a hazardous material or a residue of a hazardous material unless that person determines that the tank car is in proper condition and safe for transportation. As a minimum, each person offering a tank car for transportation must perform an external visual inspection that includes:

- (i) shell and heads...
- (ii) piping, valves,...
- (iii) missing bolts...
- (iv) closures...
- (v) protective housings...
- (vi) pressure relief...
- (vii) rupture discs...
- (viii) thermal protection
- (ix) markings
- (x) inspection date.

The situation: KHLF had 5 KHLF full service leased tank cars of "Residue: last contained Petroleum Gas, Liquefied (Propylene), 2.1, UN1075" sitting idle in Superior, WI for about 6 weeks. These tank cars had returned empty to the loading facility in Superior under a typical empty bill of lading after the product was discharged in Conway, KS. Due to market demand fluctuations, it was decided that these 5 cars were no longer needed in Superior, and as a result they were "released" by the Superior facility back to their serving carrier, the BNSF, without a bill of lading provided to the BNSF as there was no known disposition on the cars at that time. KHLF ultimately decided on a next loading point for these 5 cars and

asked the Superior facility to bill the cars to that point. However, the facility refused to do so, thus requiring KHL P to submit billing. Prior to billing the cars, KHL P questioned: a) whether we should inspect these cars to reduce the risk of a problem enroute; and b) whether we had a responsibility to examine the railcars to meet the requirements of 173.31 (d), or conversely, if the facility in Superior had a duty to do the same prior to them having "released" the cars to the BNSF. We further wondered if the last party to have examined the cars to meet the requirement in 173.31 (d) was sufficient evidence that the empty cars were safe for transportation.

The resolution: KHL P decided to physically examine the 5 cars to reduce the risk of a problem enroute and, as the current offeror of these cars, to meet what we thought was our duty outlined in 173.31 (d). We then empty billed the cars to their destination.

Questions: Given the situation noted above:

1. Did KHL P have a duty to physically inspect the railcars to meet the requirements of 173.31 (d)?
2. Hypothetically, would the Superior facility have a duty to physically inspect the railcars according to 173.31 (d) before "releasing" them to a railroad without billing?
3. If the Superior facility did physically inspect the cars, would KHL P also have to inspect the cars as the most current offeror of the empty tank cars?

Thank you in advance for your consideration. We look forward to your reply.

Stephen P. Nowicki
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