



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

MAR 18 2005

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

Mr. Richard Daley
Logistics Operations Manager
Borden Chemical, Inc.
520 112th Avenue N.E., 4th floor
Bellevue, Washington 98004

Ref No.: 05-0014

Dear Mr. Daley:

This responds to your January 25, 2005 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification of §§ 171.1(d)(2) and 173.31(g) as revised under the final rule to Docket HM-223 (68 FR 61906; October 30, 2003). In accordance with this final rule, you ask if tank car unloading activities are subject to the HMR after the carrier has departed your property.

On October 30, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket HM-223 entitled "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." The HM-223 final rule clarifies the applicability of the HMR to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The final rule codifies in the HMR long-standing policies and interpretations concerning the applicability of the regulations to specific functions and operations. We initiated the rulemaking to better define the applicability of the HMR to loading, unloading, and storage operations at fixed facilities and to clarify the relationships among Federal, State, local, and tribal agencies involved in the regulation of hazardous materials.

We are currently considering a number of petitions filed by the regulated industry asking that we reconsider certain aspects of the HM-223 final rule. On December 18, 2004, we published a final rule to delay the effective date of the HM-223 final rule until June 1, 2005 (69 FR 70902). Therefore, until June 1, 2005 tank car unloading must be performed in accordance with § 174.67, as required prior to HM-223.

Under the HM-223 final rule, tank car unloading operations conducted by consignee personnel after the rail carrier has departed the consignee's premises generally are not subject to regulation under the HMR. As adopted in the HM-223 final rule, however, the requirements in § 173.31 will begin to apply to all tank car unloading operations on June 1, 2005, even when those operations are conducted by consignee personnel. Thus, the unloader must secure access to the track, place caution signs, and block the tank car wheels and set the handbrakes. As well, Occupational Safety and Health Administration (OSHA) standards may apply to such unloading operations.



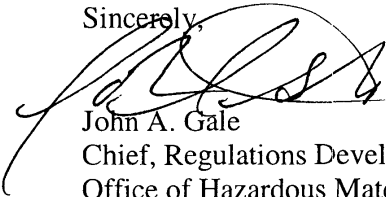
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171.1(d)(2)
173.31(9)

HM-223 will also require that transloading operations, such as the transfer of a hazardous materials from a tank car to a cargo tank, continue to be subject to all applicable HMR requirements including § 174.67. The revisions to § 174.67 will also be effective on June 1, 2005.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale", written over a horizontal line.

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

BORDEN CHEMICAL, INC.



Fax (202) 366-3012

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

Dear Mr. Mazzullo,

I am writing to request clarification of two recent additions to the 49 CFR concerning the unloading of hazardous materials.

Section 171.1(d)(2) Effective 10/1/2004

Functions not subject to the requirements of the HMR

"Unloading of a hazardous material from a transport vehicle or a bulk package performed by a person employed by or working under contract to the consignee following delivery of the hazardous material by the carrier to its destination and departure from the consignee's premises of the carrier's personnel of in the case of a private carrier, departure of the driver from the unloading area."

Section 173.31(g) Tank car loading and unloading effective 10/1/2004

I won't restate the provisions but only point out that the addition of a provision pertaining to tank car unloading implies that the activities are subject to the HMR requirements.

In the case of tank car unloading the carrier has in all instances I am aware departed our property prior to unloading. Are the unloading activities of a tank car still subject to the requirements of HMR?

Your assistance in clarifying this issue would be greatly appreciated.

Sincerely,

Richard Dalcy

Logistics Operations Manager

Supkco
§ 171.1(d)(2)
§ 173.31(g)
Loading/Unloading
January 25, 2005
05-0014