



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

APR 27 2005

Ref No.: 05-0071

Mr. Dave Anderson
Determan Brownie, Inc.
1241 - 72nd Avenue Northeast
Minneapolis, MN 55432

Dear Mr. Anderson,

This is in response to your letter dated March 24, 2005, requesting clarification of the requirements contained in the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-185) applicable to manufacturing and retesting a DOT Specification 406 cargo tank motor vehicle (CTMV). Specifically, you ask several questions regarding the testing requirements for a DOT Specification 406 CTMV. In addition, you indicate that the cargo tank does not meet the requirements prescribed in Part 178, Subpart J for the specification.

Your questions are paraphrased and answered as follows:

Q1. May a company that is not registered with the Department, in accordance with Part 107, Subpart F, manufacture a DOT Specification 406 CTMV?

A1. No. The definition of a manufacturer provided in § 178.320 states that a manufacturer must register with the Department in accordance with Part 107, Subpart F of the HMR. In addition, § 107.502(b) indicates that no person may manufacture a DOT specification cargo tank or CTMV unless that person is registered.

Q2. In accordance with § 180.417(a)(3), may the owner prepare a manufacturer's certificate based on specification markings that were placed on the cargo tank by a person who manufactured the CTMV, but was not registered with the Department?

A2. No. Section 180.417(a)(3) applies to DOT specification CTMVs manufactured before September 1, 1995. However, even if the CTMV was manufactured prior to September 1, 1995, you may not prepare a manufacturer's certificate based on information supplied by a person who was not authorized to manufacture the CTMV.

Q3. May the owner of the CTMV create the documents that are required to be maintained by § 178.345-15?

A3. No. The owner of the CTMV is not permitted to create the documents identified in § 178.345-15. The documents must be supplied to the owner by the manufacturer of the CTMV. This includes the certification documents that display the registration



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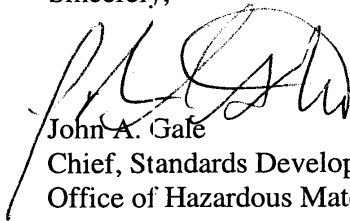
178.345-15 (a) & (b)

number of the manufacturer, the Design Certifying Engineer, and the Registered Inspector. In addition, these documents must include a certificate signed by a responsible official of the manufacturer and a Design Certifying Engineer certifying that the CTMV meets the applicable specification.

Because the owner is unable to provide any of the required documents and because the person who manufactured the CTMV was not an authorized manufacturer, the cargo tank must be certified under the procedures applicable to newly constructed cargo tanks. In the situation described in your letter, you would be converting a non-specification CTMV into a DOT specification CTMV. To accomplish this, your company could become the manufacturer of the CTMV and issue the certificates identified in § 178.345-15. This would entail registration as a cargo tank manufacturer in accordance with Part 107, Subpart F and performance of all tests and inspections under Part 178, Subpart J, as applicable to the DOT Specification 406 CTMV described in your documented QC program used to obtain your ASME Code "U" stamp.

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", is written over a horizontal line.

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

Supko
 §178.345-15(a) & (b)
 Certification
 05-0071

Gorsky, Susan <PHMSA>

From: Shelton, Danny <FMCSA>
Sent: Thursday, March 24, 2005 1:03 PM
To: Delorenzo, Joseph <FMCSA>; Mannikko, Michael <FMCSA>
Cc: Hochman, Charles <PHMSA>; Solomey, Joe <PHMSA>; Gorsky, Susan <PHMSA>; Quade, William <FMCSA>
Subject: RE: re-certify DOT cargo tanks

Joe, I wanted to get back to you as soon as possible on this situation. I have discussed this scenario with Charles Hochman, Director, Office of Hazardous Materials Technology and Joe Solomey, Assistant Chief Counsel, Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding this situation. Here is a summary of our discussions.

1. Is Interpipe LLC authorized to manufacture a DOT specification cargo tank?
 Response: No. Interpipe LLC was never registered with the Department therefore they were not authorized to manufacture a DOT Specification package. 49 CFR § 107.502(b)
 - a. No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or an exemption issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered.

2. Can Determan Brownie, Inc. prepare a certificate of compliance that indicates Interpipe Inc. LLC is the cargo tank manufacturer based on the specification marking on the tank in accordance with 49 CFR § 180.417(a)(3).
 Response: No. Section 180.417(a)(3) only applies to DOT cargo tanks manufactured before September 1, 1995, therefore, Determan Brownie, Inc. cannot create a certificate of compliance based on information displayed on a specification plate prepared by a manufacture who was not authorized to manufacture a specification package.

3. Can the motor carrier (owner) produce the documents they are required to maintain in accordance with 49 CFR § 178.345-15.
 Response: No. It is our understanding that the motor carrier (Owner) is unable to provide the required documents identified in 49 CFR § 178.345-15. This includes the certification documents including the registration numbers of the manufacturer, the Design Certifying Engineer and the Registered Inspector and the signatures of the manufacturer and the Design Certifying Engineering certifying that the cargo tank motor vehicle design meets the applicable specification.
 - a. 178.345-15(a) and (b)
 - a) At or before the time of delivery, the manufacturer of a cargo tank motor vehicle must provide certification documents to the owner of the cargo tank motor vehicle. The registration numbers of the manufacturer, the Design Certifying Engineer, and the Registered Inspector, as appropriate, must appear on the certificates (see subpart F, part 107 in subchapter A of this chapter).

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(b) The manufacturer of a cargo tank motor vehicle made to any of these specifications must provide:

(b)(1) For each design type, a certificate signed by a responsible official of the manufacturer and a Design Certifying Engineer certifying that the cargo tank motor vehicle design meets the applicable specification; and

Conclusion: Because the owner is unable to provide any of the baseline documents required and because the person who manufactured the tank was not authorized to manufacturer a DOT specification cargo tank, even though the person was issued a "U" stamp, the certification of these tanks would be considered new construction and would be akin to converting a non-specification tank to a specification tank. Yes, this can be accomplished but Determan Brownie would become the manufacturer and be required to issue the certifications identified in 49 CFR 178.345-15. Because Determan Browning, Inc. would be considered the manufacturer, they would be required to perform all tests and inspections including quality control procedures that are associated with the issuance of a "U" stamp.

Susan, we need a written interpretation regarding this situation as soon as possible. As always thanks to everyone for the timely responses.

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

From: Delorenzo, Joseph
Sent: Thursday, March 24, 2005 10:03 AM
To: Shelton, Danny
Cc: Mannikko, Michael
Subject: FW: re-certify DOT cargo tanks

This is the question I need answered in writing from RSPA. Can you give me verbal confirmation all they have to do is thickness test so I can let him know where this is going?

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

From: Anderson, Dave [mailto:davea@determan.com]
Sent: Thursday, March 17, 2005 12:22 PM
To: Delorenzo, Joseph
Subject: re-certify DOT cargo tanks

Good morning Joe. Please send me a response for clarification regarding my questions for the Inter-pipe tanks (three units total) which we have been discussing with yourself, MN DOT Michael Ritchie, and RSPA.

Question one: The specification plates has been mis-marked in two ways. One is that they have been marked DOT/MC 406, the other way is that the thickness is incorrect. Two have both materials(shell & head) as 3/16" MS, head is actually .127 and shell is 3/16" : one has the shell at .127 and the head at 3/16" (backwards from what they actually are) My understanding is that we are we to verify thickness and determine if they meet min design for DOT 406? The question has come up that we have to test the present welds on this unit? I did not think that we had to do this function. Please verify that question. Our DCE, (Ken Brors) and myself will go through the entire unit to verify that we have all the correct equipment to meet 406 on the cargo tanks. Any questions please call me at 763-502-9662 .Thanks for all your help in this matter. Dave Anderson Determan Brownie Inc.

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Internal Virus Database is out-of-date.

3/24/2005

Checked by AVG Anti-Virus.
Version: 7.0.308 / Virus Database: 266.7.1 - Release Date: 3/9/05