



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JAN 3 2006

Ms. Cherry Burke
Distribution Safety Consultant
DuPont SHE Excellence Center
DuPont Building 6096
1007 Market Street
Wilmington, DE 19898

Ref. No. 05-0295

Dear Ms. Burke:

This is in response to your November 18, 2005 letter requesting clarification regarding the attendance requirements for cargo tanks specified under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your scenario, transportation has ceased, the cargo tank has been placed on consignee's property, and the motive power has been removed. Specifically, you ask if the cargo tank attendance requirements in § 177.834(i) are applicable to a cargo tank that is loaded under the conditions in this scenario.

The answer is no. A pre-transportation function as specified in the HMR is a function required to assure the safe transportation of a hazardous material in commerce. Each shipper of a hazardous material must comply with applicable HMR requirements concerning compatibility of the lading with the packaging, outage and filling limits, securing of valves and closures, venting, and similar provisions. The attendance requirements in § 177.834(i) apply to loading and unloading operations performed by the carrier. Therefore, a shipper who loads a cargo tank prior to the onset of transportation in commerce (i.e., the arrival of the carrier and the attachment of motive power) is not subject to the attendance requirements in § 177.834(i).

I hope this information is helpful.

Sincerely,

Hattie L. Mitchell, Chief
Regulatory Review and Reinvention
Office of Hazardous Materials Standards



050295

177.834(i)

Satterthwaite
§177.834(i)
Loading/Unloading
05-0295

DuPont SHE Excellence Center
1007 Market Street
Wilmington, DE 19898



DuPont SHE Excellence Center

November 18, 2005

VIA E-MAIL

File: Cargo Tank Loading Attendance

Mr. Edward Mazzullo
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety
400 7th St., S.W.
Washington, DC 20590

**REQUEST FOR INTERPRETATION CONCERNING USE OF REMOTE VIDEO SURVEILLANCE
TO OBSERVE CARGO TANK LOADING OPERATIONS**

Dear Mr. Mazzullo:

With the enacting of HM-223, questions have arisen concerning the need for physical attendance within 25 feet of a cargo tank being loaded with regulated hazardous materials.

Prior to HM-223, at least 2 published interpretations from the Office of Hazardous Materials Standards (attached) made it clear that under certain circumstances - namely when the carrier's obligation for transportation has ceased, the cargo tank has been placed on the consignee's property, and the motive power removed - the cargo tank was no longer considered to be in transportation, and therefore the attendance rules in 49 CFR 177.834 did not apply.

With HM-223, the regulations changed to define the loading of a cargo tank as a "pre-transportation function," to which the HMR do apply.

Question 1. Under the current regulations, does a cargo tank being loaded under the circumstances described above (i.e. when the carrier is not present or involved, and the motive power has been disconnected and left the area) need to be attended throughout the process by a qualified, alert person within 25 feet of the tank and having an unobstructed view of it?

Question 2. If attendance is required, is the use of remote video surveillance in the control room an acceptable alternative to having a person within 25 feet of the tank?

Our questions are raised for two reasons. Cargo tanks containing liquefied compressed gas can take upwards of 6 hours to load. Physical attendance during that entire time period, particularly during inclement weather, places a new and burdensome requirement on an operation that previously was not subject to this requirement.

Also, pre-HM-223, the tank car regulations had read such that the unloading of tank cars had to be attended by an unloader during the entire period of unloading and while the unloading connections were intact. A number of formal and informal interpretations were issued by the Office of Hazardous Material Standards and the

Federal Railroad Administration allowing the use of signaling systems such as sensors, alarms, and electronic surveillance equipment in lieu of having the person attending the unloading physically present in the actual unloading area.

In order for such signaling systems to be authorized, the following criteria were established in the formal letter of interpretation 87-4-RSPA.

- 1) An employee was made responsible for unloading and was familiar with the nature and properties of the material being unloaded;
- 2) The employee responsible for unloading was instructed in the procedures to be followed during unloading and in the event of an emergency, and had the authority and ability to halt the flow of product immediately and take emergency action;
- 3) In the event of an emergency, the system was capable of immediately halting the flow of product or alerting the employee responsible for unloading;
- 4) The monitoring device provided immediate notification of any malfunction to the person responsible for unloading, or the device was checked hourly for malfunctions; and
- 5) In case of a malfunction, the device would no longer be relied upon and instead the individual responsible for unloading would constantly observe the unloading.

(The use of remote observation through signaling systems and video surveillance has now been incorporated into the tank car unloading regulations that apply to transloading operations.)

An interpretation that remote observation of cargo tank loading is permissible - under these same conditions that were acceptable for tank car unloading - would help to relieve the regulated community of this new and burdensome requirement, while still providing an equivalent level of safety. Again, we are seeking this interpretation of the regulations as they apply when the carrier's obligation for transportation has ceased, the cargo tank has been placed on the consignee's property, and the motive power removed.

Your assistance in clarifying these issues is most appreciated.

Sincerely,

Cheryl A. Burke

Cheryl A. Burke
Distribution Safety Consultant
Safety, Health, and Environmental Excellence Center, DuPont Building 6096
ph: 302-774-2778; fx: 302-351-4111; e-mail: cherry.burke@usa.dupont.com

Nickels, Matthew <PHMSA>

From: Mazzullo, Ann <PHMSA>
Sent: Monday, November 14, 2005 8:27 AM
To: INFOCNTR <PHMSA>
Subject: FW: Question

Satterthwaite
§ 17.834
Loading/unloading
05-0295



177834interp.pdf (67 KB)



177834interpa.pdf (165 KB)

Request for interpretation - please take appropriate action.

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

From: Cherry Burke [mailto:Cherry.Burke@USA.dupont.com]
Sent: Friday, November 11, 2005 3:31 PM
To: Mazzullo, Ann <PHMSA>
Subject: Question

Know this isn't your area, but to whom do I write to request a formal DOT interpretation? Do I need to send it through paper mail, or can I e-mail it to whomever you indicate? Or could you forward this note on?

The cargo tank motor vehicle loading attendance regs have changed somewhat with the issuance of HM-223 as a final rule. Previously, DOT had published letters of interpretation that basically said that attendance requirements did not apply for loading and unloading when the carrier's obligation for the transportation had ceased, the cargo tank was placed on private property, and the motive power disconnected. I've attached those below. The logic was that under these circumstances, the cargo tank was not in transportation. The new regulations - which indicate that loading is a pre-transportation function and the HMR apply - make the previous interpretations invalid.

Since the current regs would now require attendance by having a qualified person within 25 feet of the cargo tank, etc., etc. even when the carrier's obligation has ceased and the motive power has been removed, we would like to get a formal interpretation if remote video monitoring would be an acceptable alternative for loading attendance under these circumstances.

Some years ago, the FRA issued an interpretation that remote video monitoring (with certain caveats) was acceptable for attending tank car unloading. I'm hoping for the same with cargo tank loading.

Thanks very much -

Cherry

(See attached file: 177834interp.pdf) (See attached file: 177834interpa.pdf) (See scenario 2, question 3)

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U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

FEB 13 1998

Mr. Dana Murphy
Vice President
West Central Environmental Corp.
Post Office Box 83
Rensselaer, NY 12144

Dear Mr. Murphy:

This is in response to your letter of December 5, 1997, concerning the status of a cargo tank which has been separated from its tractor. Specifically you asked if a cargo tank, located on private property with the motive power removed from the property, is subject to the attendance requirements of the Hazardous Materials Regulations (§ 177.834(i)) as it is loaded or off-loaded over a period of 12 to 48 hours.

"Transportation," as defined in § 5102 of the Federal hazardous material transportation law (49 U.S.C. 5101-5127), is any movement of property by any mode, and any loading, unloading, or storage incident to the movement. As applicable to the attendance requirements, highway transportation of a cargo tank ceases when: (1) The carrier's obligation for transporting the materials is fulfilled; (2) The cargo tank has been placed upon the consignee's premises; and (3) The motive power has been removed from the trailer and removed from the premises (§ 177.834(i)(2)).

A tank removed from its motive power on private property is not considered in transportation and not subject the attendance requirements when the above conditions have been met. For information concerning the Federal Motor Carrier Safety Regulations in 49 CFR Parts 300-399, please contact the Federal Highway Administration's Office of Motor Carriers at (202) 366-1790.

I hope this answers your inquiry. If we can be of further assistance, do not hesitate to contact us.

Sincerely,

Delmer F. Billings
Chief, Regulations Development
Office of Hazardous Materials Standards

AP 1081



WEST CENTRAL ENVIRONMENTAL

P.O. Box 83
Rensselaer, NY 12144
518-272-6891

24-HOUR SERVICE

CORP.

EPA ID #NYD000708271
N.Y.S. Waste Haulers #4A-106

*Contract for
File # 177.834
SC: 442*

Syracuse, NY
315-472-6500

Binghamton, NY
607-722-6400

Poughkeepsie, NY
914-471-1400

Grand Island, NY
716-775-3335

FAX COVER SHEET

FAX#: (518) 272-0108

OF PAGES INCLUDING COVER SHEET: 1

TO: Michael Johnson

FROM: DANA Murphy

DATE: 12/5/97

TIME: _____

RE: CFR 49 Subpart B 177.834(i)(1),(2),(3)&(4)

MR. JOHNSON

IS A SEMITRAILER CARGO TANK WHICH HAS BEEN
SPOTTED ON PRIVATE PROPERTY (SEPERATED FROM ITS TRACTOR)
STILL REGULATED BY THE ABOVE MENTIONED PARTS AND/OR OTHER
FMCSR WHILE LOADING OR OFFLOADING HAZARDOUS MATERIALS.
SPECIFICALLY IF SUCH LOADING OR OFFLOADING WAS
TO OCCUR OVER AN EXTENDED PERIOD OF TIME, SAY
12 TO 48 HRS.?

Respectfully
DANA Murphy
VICE PRESIDENT

IF YOU DO NOT RECEIVE ALL PAGES TRANSMITTED, PLEASE NOTIFY ME IMMEDIATELY AT (518) 272-6891.

Qp1071



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

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

OCT 18 2000

Mr. Phil Stewart
Dow Chemical Canada, Inc.
1425 Vidal Street South
Sarnia, Ontario
CANADA N7T 8C6

Ref. No. 00-0132

Dear Mr. Stewart:

This is in response to your request concerning the attendance requirements for loading and unloading of a cargo tank motor vehicle under 177.834(i) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

Scenario 1:

A cargo tank arrives at our **unloading rack**. The motive power remains connected. The cargo tank is unloaded into a storage tank, tank farm or processing unit by our plant personnel.

- Q1. Is the cargo tank considered to be "in transportation"? If so, do all the unloading attendance requirements apply, including the requirement that personnel remain within 25 feet of the tank during the entire offloading operation?
- A1. Yes, if the carrier's obligation to transport the hazardous material is not yet fulfilled, the cargo tank is still "in transportation." All unloading requirements of the HMR apply. As provided by § 177.834(i)(2), a carrier's obligation to ensure attendance during unloading ceases, and transportation ends, when: (1) the carrier's obligation for transporting the material is fulfilled; (2) the cargo tank is placed on the consignee's premises; and (3) the motive power has been removed from the premises. Because the unloading is regulated under the HMR, due to the carrier's continuing presence, facility personnel must comply with the applicable unloading in § 177.834. As provided by § 173.30, a person who unloads hazardous materials from a cargo tank motor vehicle must comply with the applicable unloading requirements of Part 177; i.e., § 177.834. Therefore, under scenario 1, plant personnel who perform the unloading function must comply with the attendance requirements in § 177.834.

You provided other alternative scenarios, some where the motive power remained and some where the motive power was removed. If the carrier has no further obligation, as determined under § 177.834(i)(2), then the attendance requirements do not apply to anyone. If the carrier still has an obligation, the attendance requirements then apply to whoever unloads.



000132

177.834

Scenario 2:

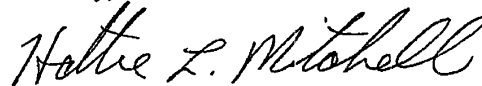
A cargo tank motor vehicle operated by a motor carrier arrives at our loading rack. The motive power remains connected. The cargo tank is loaded from our storage tanks by our plant personnel.

- Q2. Is the tank considered to be "in transportation"?
- A2. Yes. As provided by § 177.834(i)(1), a cargo tank must be attended by a qualified person at all times when it is being loaded. The person who is responsible for loading the cargo tank is also responsible for ensuring that it is attended. A person is "qualified" if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, he has been instructed on the procedures to be followed in emergencies, he is authorized to move the cargo tank, and he has the means to do so.
(See § 177.834(i)(4)).
- Q3. Is the tank considered to be "in transportation" if the motive power is removed?
- A3. No. A cargo tank removed from its motive power on private property is not considered to be in transportation. Therefore, if a motor carrier delivers a cargo tank to a shipper, disconnects the motive power and leaves the premises, the person loading the cargo tank is not responsible for ensuring attendance as provided by § 177.834(i)(1).

You also stated that your plant sites have no public access and that the loading and unloading racks have fully automated electronic monitoring capabilities that can be controlled from control rooms and that can be manually operated if the automated process malfunctions. The HMR currently do not provide for the use of an automated monitoring system, in lieu of direct human intervention, for the loading and unloading of cargo tanks in transportation. However, you may wish to seek authorization to use an automated monitoring system by submitting an application for exemption in accordance with the procedures in § 107.105. I have enclosed for your information copies of three Federal Register publications on the attendance requirements.

I hope this information is helpful.

Sincerely,



Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Enclosures

Dow Chemical Canada Inc.
1425 Vidal Street South
Sarnia, Ont.
N7T 8C6
Phil Stewart
Phone: (519) 339-5047
Fax: (519) 339-3871
e-mail: pjestewart@dow.com

Betts
177.834
00-0132

Dow Chemical Facsimile Transmittal

To: U.S. Department of
Transportation

Fax: (202) 366-3012

From: Phil Stewart

Date: 28/04/2000

Re: Loading/Unloading
Requirements

Pages: 2

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Notes:

To Whom It May Concern:

Attached is a document I sent via your web page earlier today. I received a phone this afternoon stating that I was required to fax this request to your department if I a written response to my questions is required. In light of this, would you please review and send me a written response of interpretation or ruling to the questions listed and sent a reply back to the above mentioned address.

Thanks,

Phil Stewart

Your Response Has Successfully Been Sent

The following was submitted to hmis@rspa.dot.gov on Friday, April 28, 2000 at 11:37:37

message_type: Other

comments: Would you please provide your interpretation or ruling with regards attendance requirements as stipulated in 177.834 (i)(1) & (2), to the following Loading/Unloading situations I have provided below. Preamble All of our plants sites are controlled facilities. This means there is no public access. Loading/Unloading racks have automated electronic monitoring capabilities and controlled via a control rooms. We also have the ability to manually operate these racks if the event our automated process malfunctions. All our loading/unloading racks or areas are designed for full containment should a spill occur including deluge systems should a fire occur . Our plant personnel are qualified and trained on the material they are working with as well as the operating procedures. Situation #1 Cargo tank arrives at unloading rack. Motive of power remains hooked up. The tank will be offloaded into a storage tank or tank farm by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #2 Cargo tank arrives at unloading rack. Motive of power is removed and carrier leaves. The tank will be offloaded into a storage tank or tank farm by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #3 Cargo tank arrives at unloading rack. Motive of power remains hooked up. The tank will be offloaded directly into our processing unit by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #4 Cargo tank arrives at unloading rack. Motive of power is removed and carrier leaves. The tank will be offloaded directly into our processing unit by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #5 Cargo tank arrives at loading rack. The motive of power remains hooked up. The tank will be loaded from our storage tanks by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the loading attendance requirements apply as stipulated. Is our personnel who will be loading this tank required to be within 25' of the tank during the entire loading period or what does attended by a qualified person at all times when the tank is being loaded mean? Situation #6 Cargo tank arrives at loading rack. The motive of power is removed and the carrier leaves. The tank will be loaded from our storage tanks by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the loading attendance requirements apply as stipulated? Is our plant personnel who will be loading this tank required to be within 25' of the tank during the entire loading period or what does attended by a qualified person at all times when the tank is being loaded mean? I apologize for such a wordy document, but I wanted to capture as many of the various types of loading/unloading situations that do occur and to obtain a complete an answer as possible. Thanks in advance, Phil Stewart

organization: Dow Chemical Canada Inc.

phone: (519) 339-5047