



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

AUG 16 2006

Mr. David Ellis
Compliant Technologies, Inc.
8325 Beals Chapel Road
Lenoir City, TN 37772

Reference No. 06-0149

Dear Mr. Ellis:

This is in response to your June 29, 2006 letter asking how soon a motor carrier is required to report a release of a hazardous material that meets the definition of both the Division 6.2 (infectious substance) and Class 7 (radioactive) hazard classes under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). We have paraphrased your questions and answered them below in the order you provided.

- Q1. Must a carrier report an incident at the earliest practical moment to the National Response Center (or Centers for Disease Control and Prevention for Division 6.2) or may the carrier delay the reporting for up to 12 hours while it conducts an investigation to determine the cause and/or to determine if contamination spread from the trailer to the roadway where the truck had traveled?
- A1. Incidents listed under § 171.15 of the HMR must be reported at the earliest practical moment by telephone to the appropriate organization specified in the section. Any reporting delay beyond what is necessary to safely secure the incident scene, such as an investigation to determine the cause of the release and its possible spread along the highway the truck traveled, is not permitted.
- Q2. We believe the earliest practical moment to report an incident in § 171.15(a) means just that and should not be interpreted that one has 12 hours to report the incident regardless of the situation. Is our understanding correct?
- A2. Yes.
- Q3. The provisions in § 171.15 of the HMR indicate contamination, or suspected contamination, of such materials on the outside of a package (e.g., exceeding the levels permitted in § 173.443 for Class 7 (radioactive)) while in transportation would warrant a report to the NRC and that it should be reported at the earliest practical moment. Is that accurate or does the material actually have to spill on a public road for reporting to be required?



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171.15

A3. Section 171.15 requires that anytime a fire, breakage, spillage, or suspected radioactive contamination occurs involving a radioactive material during the course of transportation in commerce, the person or entity in physical control of the hazardous material when it is released is responsible for reporting the incident to this agency in the manner described in answer A1.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell". The signature is fluid and cursive, with a large, stylized initial "H" and "M".

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

June 29, 2006

From:

David Ellis
Compliant Technologies, Inc.
8325 Beals Chapel Road
Lenoir City, TN 37772

To:

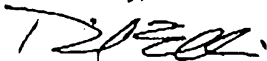
U.S. Department of Transportation
Washington, DC

Re: Questions on Incident Reporting

I need clarification on incident reporting regarding Division 6.2 Infectious Substances and Class 7 Radioactive Materials. Suppose that a motor carrier transporting such materials (i.e., 6.2 or 7) in commerce notices that the hazardous material has breached the package (and spilled) while in transportation. **Does the carrier need to report the incident at the earliest practical moment to the National Response Center (or CDC for 6.2) or can they delay the reporting for up to 12 hours while they (i.e., the carrier or it's agents) conduct an investigation to determine the cause and/or to determine if contamination spread from the trailer to the roadway where the truck had traveled?** Such an investigation could take many hours to complete, possibly even more than 12 hours. It is our opinion that 49 CFR 171.15 would require reporting at the earliest practical moment and that the 12 hour "rule" in the regulations was provided for a situation such as a remote highway accident, a driver being incapacitated, a location where a phone does not exist or lastly where reporting to the National Response Center might take efforts away from the initial emergency response notifications and process. We believe that the earliest practical moment means just that and should not be interpreted that one has 12 hours to report regardless of the situation. **Is that accurate?** I would surmise that the National Response Center (NRC) would want to know as soon as possible for many different reasons including public safety and even national security in some instances, especially with such dangerous materials. A number of agencies should have keen interest in such incidents including the Department of Homeland Security. Lastly, the requirements in 49 CFR 171.15 indicate that contamination (or suspected) of such materials on the outside of a package (e.g., exceeding levels in 49 CFR 173.443 for Class 7) while in transportation would warrant a report to the NRC and that it should be reported at the earliest practical moment. **Is that accurate or does the material actually have to spill on a public road for reporting to be required?** It is our opinion that if the package is merely breached (e.g., breakage) and/or has suspected (i.e., not confirmed) contamination that reporting is required per 49 CFR 171.15 even if it is not yet known whether the material spilled on a public highway. Contamination on the exterior of a package can be a hazard to both transport workers and the general public. The regulations state, "fire, breakage, spillage or suspected contamination" and do not imply that the material has to be spilled on a public road.

It is imperative that I receive a timely response regarding these questions so that I may appropriately advise my clients and others on the proper method to report incidents to the National Response Center. Please send your reply to the above stated address. Should you need to contact me please call (865) 384-3926. Thank you.

Sincerely,



David Ellis
Compliant Technologies, Inc.
865-384-3926

Edmonson
§171.15
Notice of Hazardous
Materials Incidents
06-0149