



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

APR 18 2007

Mr. D.L. Casmeay
Vice President, Operations & Security
JCI Jones Chemicals, Inc.
2500 Vanderhoof Road
P.O. Box 349
Barberton, OH 44203

Reference No. 07-0048

Dear Mr. Casmeay:

This responds to your recent letter and March 22, 2007 telephone conversation with a member of my staff requesting clarification on the hazmat training and recordkeeping requirements prescribed in § 172.704(a)(5) and (d) and Subpart I of Part 172 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You state your company maintains a copy of its hazmat training materials and resulting employee training records for the current and previous two years at each of its branches, and that it describes its in-depth security training as a "security plan addendum." You enclosed copies of some your company's training records. You ask if your company's hazmat training and recordkeeping practices, including those for security awareness and in-depth security training, comply with the HMR.

The answer is yes. Section 172.704(a)(4) requires all hazmat employees, defined in § 171.8 of the HMR, to be trained and tested by their hazmat employers in accordance with Subpart H of Part 172, and to receive in-depth security training, if applicable, in accordance with Subpart I of Part 172. Section 172.704(d) requires that each hazmat employer create and retain a record certifying each hazmat employee's current training, including that of the preceding two years, and maintain this record for the duration of the employee's employment in each applicable hazardous material job function and for 90 days thereafter. No specific format is specified for the testing or certification documentation.

You also state your company provides each of its branch employees with in-depth security training because they affect the safe transport of materials subject to this training listed under § 172.800(b), has done so since December 22, 2003, and maintains a copy of the training materials, employee records, and employee certification at each of its branches. You ask if these practices comply with the HMR's security training requirements under § 172.704(a)(4) and Subpart I of Part 172. The answer is yes.

You raised several questions about the Federal Railroad Administration's (FRA's) inspections and resulting reports of your company's Caledonia, NY, facility. For more information on rail carrier compliance matters, you may wish to contact Mr. Bill



070048

172.704(a)(4)

Schoonover, Staff Director, Hazardous Materials Division, Office of Safety Enforcement,
Routing Symbol RRS-12, Federal Railroad Administration, 1120 Vermont Avenue, NW,
Washington, DC 20005, (202) 493-6229.

I hope this satisfies your request.

Sincerely,

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

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



Edmonson
§ 172.704(a) (5)
172.704(a) (4)
Training
07-0048

22 February 2007

US Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Attn: Ms. Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Material Standards
400 7th Street S.W.
Washington, DC 20590-0001

Fax: 1-202-366-3012

Dear Ms. Mitchell-

I am writing to you again on behalf of JCI Jones Chemicals Inc. ("JCI") to request clarification of elements of *HM-232 Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials* and specifically as they pertain to regulations under 49 CFR 172.704(d) and (a)(5). I last wrote to you on September 29th, 2006 (attachment 1) after a DOT/FRA inspection was conducted at JCI's Caledonia, New York Branch on September 25th, 2006. No violations were noted in that Inspection Report (attachment 2), but nine 'deficiencies' were identified and listed. My letter to you requested interpretation on two of the alleged deficiencies: The first claim was that JCI "has not provided "In-Depth" security training to any of their employees." The second claim was that JCI's security plan was deficient because it had "multiple dates, revisions and amendments." As stated in our prior letter to you, and in accordance with HH-232 regulations and guidance provided by the Chlorine Institute's Security Management Plan and our Corporate Office, JCI has developed and implemented an extremely comprehensive security plan over the course of the past six years. Moreover, as explained in our letter, we treat all employees at all eleven JCI Jones Chemicals Inc. branches as hazmat employees. For this reason, we provide all employees the same high-level security training, therefore, there is no reference in our records to "In-Depth Security Training" because again, everyone is trained above and beyond what is required under "Security Awareness Training."

You provided a prompt response to our request for interpretation dated November 9, 2006 (attachment 3). Regarding the alleged deficiency as to "In-Depth" training, you concluded that given that all JCI employees receive the same In-Depth level of security training, JCI need not distinguish between 'In-Depth Security Training' and 'Non In-Depth Security Training' in our training records. This response was provided to the local Inspector for the DOT/FRA on December 22, 2006 (attachment 4).

Your November 9, 2006 response also provided an answer regarding the alleged deficiency finding that there was no need for JCI to update each and every page of a written security plan whenever a revision to that plan is made.

On Thursday, February 8th, 2007, the DOT/FRA conducted another inspection at JCI's Caledonia, New York Branch. The Inspection Report (attachment 5) of this inspection listed one alleged violation. Specifically that JCI "has not created DOT Hazmat Employee training records." The Report also listed one deficiency, that JCI "has not provided "In-Depth" security training to the appropriate plant personnel."

As to the alleged deficiency for "In-Depth" training, we are wondering how best to reply. We previously provided the Inspector with your response of November 9, 2006 and despite our best efforts, there still appears to be a misunderstanding regarding this issue. As you can see from the attached Records of Security Training (attachment 8) for each of the facility's 14 employees, our training exceeds the requirements of 49 CFR 172.704(a)(5). Despite the fact that JCI has taken an extra step and provided In-Depth training to all of our employees, we are again being found deficient. Given the time and commitment JCI has dedicated to this effort, this impasse appears to represent an effort to punish JCI for doing more. JCI is willing to take steps to address any concerns that may exist. For example, we could modify the Security Record of Training form to include the phrase "In-Depth" security training, however, this will not change the content of the security training provided to any JCI employees; i.e., we will continue to provide identical extensive ("In-Depth") security training to all JCI employees. Please let us know how you think it would be best for us to proceed, as we do not want to continue to have alleged "deficiencies" appear on our inspection reports.

The alleged violation from the most recent inspection is that JCI failed to comply with 49 CFR 172.704(d) which requires regulated companies to retain both current and the previous three years records of training as long as that employee is employed by that employer as a hazmat employee. Attachment (6) is the Record of Training for all fourteen Hazmat Employees at the Caledonia Branch. As you can see, JCI keeps a complete record of current training, in compliance with 172.704(d). The subparts of the regulation require that a record be maintained that includes:

1. The hazmat employee's name;
2. The most recent training completion date of the hazmat employee's training;
3. A description, copy, or the location of the training materials used to meet the requirements of paragraph (a) of Section 172.704;
4. The name and address of the person providing the training; and
5. Certification that the hazmat employee has been trained and tested, as required by subpart 172.704.

The records provided show that all of this information is recorded and maintained as required. Although these and other Records of Training for Hazmat Employees were made available to the FRA Inspector on February 8th, the Inspector stated that because a written quiz (attachment 7) for one of the topics covered during one month's safety training wasn't administered until the following month, this meant that, in the words of the inspector, "at the end of the day, you cannot prove that you conducted the training." We are again at a loss as to what more can be said and or done with respect to documenting the training conducted. JCI has made every effort to more than comply with the regulatory requirements and does not wish to have a history of alleged deficiencies or violations. To that end, we ask that no violation be issued and we respectfully request a response indicating that the materials provided in the attachments contradict the claim that JCI has failed to keep a "record of current training," in accordance with Section 172.704(d). If there is a belief that the records provided somehow do not comply with the regulation, we request a further opportunity to address this allegation before any violation is issued. JCI is open to recommendations as to how our records might be revised, should that be necessary.

In closing, we sincerely appreciate any guidance and or comments you may have. We have been informed by the inspector that he intends to recommend that a civil penalty be levied against JCI. As stated in our letter of September 29th, we have worked extremely hard to develop and maintain Hazmat Employee and Security training programs both during the 76 year history of our Company and at an even higher level during the past approximately six years. The U.S. Department of Homeland Security, the FBI, the New York State Office of Homeland Security, the New York State Police, the Livingston County Sheriff's Department, and the Caledonia Police Department do not have specific enforcement authority regarding our Security Plan and Security Training program, yet each of these agencies has reviewed our Security Plans and Records and commended us on the thoroughness of this program. JCI as a company does more than seek to comply with the rule and we take our responsibilities to our employees and to the citizens of the communities in which our facilities are located extremely seriously and sincerely believe that our program more than meets the regulatory requirements that have been raised.

We look forward to hearing from you on this matter. Should you have any questions or require any additional information from me, please do not hesitate to contact me. I can be reached at 1-330-825-4521.

Sincerely,
JCI JONES CHEMICALS INC.


D.L. CASMEY

Vice President of Operations & Security

dlcasmey@jcichem.com

1-330-825-4521 (phone)

1-330-825-0504 (fax)

CC: Mr. Tim Gaffney, Executive Vice President, JCI Jones Chemicals Inc.
Mr. Michael Croke, Vice President of Safety, JCI Jones Chemicals Inc.
Mr. James Nelson, Manager, JCI Jones Chemicals Inc., Caledonia Branch

Attachments:

- (1) Copy of the Inspection Report from the 9/25/06 inspection (9 items listed but no violations recommended)
- (2) Copy of our 9/29/06 Request for an Interpretation from the DOT on the two security related issues referenced in the 9/25/06 Inspection Report
- (3) Copy of the DOT's 11/9/06 response to our Request for an Interpretation
- (4) Copy of our 12/22/06 voluntary response to the FRA's 9/25/06 Inspection Report
- (5) Copy of the Inspection Report for the 2/8/07 follow-up inspection (2 items listed; violation recommended for item 1)
- (6) Copy of the employee's Hazmat Employee Record of Training for all 14 Caledonia Branch employees
- (7) Copy of quiz given to employees on "Hazard Communication Program" which is the first item listed on the Hazmat Employee Record of Training (note the date on the Training Record is 3/29/06 and the date on the quiz is 4/21/06 which concerned the inspector)
- (8) Copy of the employee's Record of Security Training for all 14 Caledonia Branch employees