



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

JUN 05 2013

Mr. Jonathan VanScoyoc
Chevron Phillips Chemical Company LP
306 Catharine Street
Philadelphia, PA 19147

Ref. No.: 13-0050

Dear Mr. VanScoyoc:

This is in response to your February 14, 2013 letter requesting clarification of the cargo tank attendance requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you seek clarification of § 177.834, which specifies motor vehicle unloading attendance requirements.

In your letter you describe an unloading operation in the refining industry in which a cargo tank containing hazardous materials is connected to a process unit through piping or hoses. This process unit is injected with hazardous materials over a period of 1-2 days. In your subsequent March 15, 2013 email response to a member of my staff, you indicate that the carrier, in all scenarios, is not a private carrier. An attendant, both with and without the tractor (motive power) present, observes this process. The attendants generally include the original carrier (contract or common carrier) who transported the hazardous material, an outside contractor, or a combination of both. Your questions related to this scenario are paraphrased and answered below.

Q1. If a cargo tank has been 1) Delivered and placed upon the consignee's premises; 2) The motive power has been removed from the cargo tank; and 3) The motive power has been removed from the premises and subsequently the motor carrier (i.e. the driver) returns to unload the cargo tank, is it the motor carrier's obligation to ensure that a cargo tank is attended by a qualified person in accordance with § 177.834(i)(2)?

A1. No. Under § 177.834(i)(2), the motor carrier is no longer obligated to ensure that a cargo tank unloading operation is attended when the carrier's obligation for transporting the materials is fulfilled. Specifically, it is no longer the motor carrier's responsibility to ensure that a cargo tank unloading operation is attended when the cargo tank has been placed on the consignee's premises, and the motive power has been removed from the cargo tank and removed from the premises.

Q2. Do the attendance requirements of § 177.834(i)(3) apply if an outside contractor unloads a cargo tank?

A2. Yes, provided the motive power is on the premises and connected to the cargo tank. Section 177.834(i) requires that a cargo tank is attended by a “qualified” person at all times when it is being loaded or unloaded. According to § 177.834(i)(4), a person is qualified if they have been made aware of the nature of the hazardous material being loaded or unloaded, have been instructed on emergency procedures, are authorized to move the cargo tank, and have the means to do so. The attendee (i.e., qualified person) must also meet the hazmat employee training requirements of Part 172, Subpart H, which specify general awareness, function-specific, and safety training and Part 172, Subpart I, which specifies safety and security plans. Any outside contractor used to fulfill the unloading attendance requirements must be in compliance with § 177.834(i).

It should be noted however, that if the motive power is removed from the cargo tank and removed from the premises, the cargo tank is not considered to be “in transportation” and the unloading operation is not subject to the HMR.

Q3. What is the definition of the term “alert” as referenced in § 177.834(i)(3)?

A3. Although the HMR do not specifically define the term “alert,” the purpose of the attendance requirements is to ensure that each cargo tank is safely loaded and unloaded. The term “alert” is typically defined as “quick to notice any unusual and potentially dangerous or difficult circumstances.” In the event of an emergency, a person that is “alert” will be able to rapidly halt the process and take immediate action.

Q4. Do the attendance requirements in § 177.834(i)(3), specifically the requirement to have an unobstructed view of the cargo tank and delivery hose, apply to the process of unloading a cargo tank with temporary piping rather than a delivery hose?

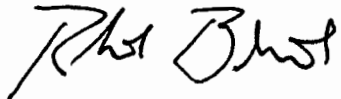
A4. Yes. Provided the unloading operations are subject to § 177.834(i)(2), the requirement to have an unobstructed view of the cargo tank and delivery hose, would apply to the process of unloading a cargo tank with temporary piping rather than a delivery hose.

Q5. In the event an attendant would need a break, would a second qualified attendant be needed as a replacement during that break?

A5. Yes. Provided the unloading operations are subject to § 177.834(i)(2), a qualified person must be in attendance at all time during the unloading. The HMR does not permit any minimum lapse in attendance.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is written in a cursive style with a large initial "R" and "B".

Robert Benedict
Chief, Standards Development
Standards and Rulemaking Division



O'Donnell
§ 177.834
Loading / Unloading
13-0050

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I am requesting clarification of the Hazardous Material Regulations (HMR: 49 CFR Parts 177.834) applicable to the cargo tank Attendance requirements. I have three specific questions.

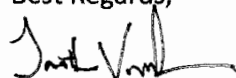
- (1) It is understood that if a carrier has removed its motive power from the cargo vessel and off the premise, the attendance requirements are no longer applicable. What if the driver removes his power but then returns to off-load the cargo vessel? Would the attendance requirement still be applicable? It is also noted in the interpretations that the regulation does not apply to plant personnel handling the unloading of the cargo vessel. Would the regulations also not apply to independent contractors?
- (2) Is there a clear defined interpretation of "alert" and is the attendant required to meet these requirements at any given moment?
- (3) The regulation noted the qualified person have an unobstructed view of the cargo tank and delivery hose. What if a delivery hose is not used, but rather temporary piping is run directly to the trailer for off-loading?

My questions are in regards to a common operation that occurs in the refining industry. Specifically, a cargo tank with hazardous materials is connected to a process unit through various piping or hose and the hazardous material is injected into the process unit over 1-2 days during an application/process that occurs every few years. One attendant, with or without his/her DOT approved tractor on the premise, generally will stay with the delivery during this process. The attendant could be the original driver who transported the material or an outside contractor. Generally it is done by shifts. Is an attendant based on the Hazardous Material Regulations even required under any of these scenarios? If so, are there any limits, such as a maximum amount of time, an attendant can be classified as alert? For example, if an

attendant is working a 12 hour shift, it is inevitable that person will need a break (for example, to use the bathroom). Would this be a violation, even if a portable toilet was within 25 feet and with a view of the hoses? Or would a second qualified attendant be required during any needed breaks?

Thank you in advance for any clarification and/or recommendations under this scenario. In my experience this operation is being interpreted differently among both refineries and transportation carriers/contractors. Any clarification would be very helpful so all parties are adhering to the regulations and safe practices are be followed.

Best Regards,

A handwritten signature in black ink, appearing to read "Jonathan VanScoyoc". The signature is written in a cursive style with a long horizontal stroke at the end.

Jonathan VanScoyoc

O'Donnell, Lisa (PHMSA)

From: VanScoyoc, Jonathan <VANSCJ@cpchem.com>
Sent: Friday, March 15, 2013 10:29 AM
To: O'Donnell, Lisa (PHMSA)
Subject: RE: Inrerpretation Request on Hazardous Materials Regulations

Thanks for getting back to me. I look forward to getting an interpretation on this. No, in all cases in the industry, the carrier is not a private motor carrier, the shipper is not the carrier.

Best Regards,

Jonathan VanScoyoc - North America Sales Manager Refinery And Fuels - Specialty Chemicals
Chevron Phillips Chemical Company LP
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From: lisa.o'donnell@dot.gov [mailto:lisa.o'donnell@dot.gov]
Sent: Friday, March 15, 2013 8:39 AM
To: VanScoyoc, Jonathan
Subject: Inrerpretation Request on Hazardous Materials Regulations

Dear Mr. VanScoyoc:


I have been assigned to draft the response to your request for interpretation of the attendance requirements in 49 CFR Section 177.834. I was wondering if the carrier in the scenario you provide is a private motor carrier; that is, is the shipper also the carrier?

Thank you for your help.

Sincerely,

Lisa K. O'Donnell
Transportation Regulations Specialist
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety
Standards and Rulemaking Division



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<http://www.phmsa.dot.gov/hazmat>

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

(c) *Transportation functions.* Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who transports a hazardous material in commerce.

Transportation of a hazardous material in commerce begins when a carrier takes physical possession of the hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, until the car is delivered to a private track or siding. For a private motor carrier, transportation of a hazardous material in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Transportation of a hazardous material in commerce includes the following:

(3) *Unloading incidental to movement of a hazardous material.* Removing a package or containerized hazardous material from a transport vehicle, aircraft, or vessel; or for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated by Department of Homeland Security Delegation No. 0170 at 2(103).) Unloading incidental to movement includes transloading.

§ 173.30 Loading and unloading of transport vehicles.

A person who is subject to the loading and unloading regulations in this subchapter must load or unload hazardous materials into or from a transport vehicle or vessel in conformance with the applicable loading and unloading requirements of parts 174, 175, 176, and 177 of this subchapter.

§ 177.834 General requirements.

(i) *Attendance requirements* —(1) *Loading.* 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 so attended.

(2) *Unloading.* A motor carrier who transports hazardous materials by a cargo tank must ensure that the cargo tank is attended by a qualified person at all times during unloading. However, the carrier's obligation to ensure attendance during unloading ceases when:

- (i) The carrier's obligation for transporting the materials is fulfilled;
 - (ii) The cargo tank has been placed upon the consignee's premises; and
 - (iii) The motive power has been removed from the cargo tank and removed from the premises.
- (3) Except for unloading operations subject to §§ 177.837(d), 177.840(p), and 177.840(q), a qualified person "attends" the loading or unloading of a cargo tank if, throughout the process, he is alert and is within 7.62 m (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation.
- (4) 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.

HM-225A

...the majority of chlorine MC 330 and MC 331 tanks are unloaded after the motive power has been detached and has left the receiving facility. Thus, under sections 171.8, 177.834, and 178.337-11, the detached tank is no longer a cargo tank within the meaning of the Hazardous Materials Regulations, and is no longer subject to the provisions of the final rule.

Of greater importance is the fact that, unlike propane and ammonia tanks, the chlorine tank is unloaded from a valve located atop the tank. Accordingly, for a person to be within arms length of the valve during unloading he or she must perch precariously atop the tank for the several hours necessary to complete the unloading process. This requirement reflects the fact that the chlorine tank was never really considered during the rulemaking process, and appears in the final rule unexpectedly and inappropriately. Further, since the arms length provisions of the final rule become effective on July 1, 1999, a serious safety issue is present.