



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

OCT 05 2016

Mr. Don Robinson  
Executive Vice President  
NGL Crude Logistics, LLC  
Brookhollow Central II  
2900 North Loop West  
Suite 1250  
Houston, TX 77024

Reference No. 16-0083

Dear Mr. Robinson:

This letter is in response to your May 10, 2016, letter and email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to loaded tank cars containing crude oil and consigned to private track for temporary storage. Specifically, you seek confirmation of your understanding that the provisions prescribed in § 174.304 do not prohibit the rail transportation of loaded crude oil tank cars to a private track for temporary storage, where the tank cars will eventually be transported via a second rail movement to the end-user.

Your understanding is correct. It is the opinion of this Office that § 174.304 does not apply to the temporary storage of a loaded tank car containing a Class 3 (flammable liquid) on private track (see § 171.8) for the eventual transportation to its final destination. Section 174.304 prohibits the transportation of a rail tank car containing a Class 3 (flammable liquid) material unless it is originally consigned or subsequently consigned to a party meeting the conditions established in the section. Furthermore, the HMR do not apply to storage of a rail car on a private track (see § 171.1(d)(3)).

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

Stevens  
§ 174.304  
\*Tank Cars  
16-0083

**Dodd, Alice (PHMSA)**

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**From:** Rivera, Jordan CTR (PHMSA)  
**Sent:** Tuesday, May 10, 2016 2:15 PM  
**To:** Hazmat Interps  
**Subject:** FW: Interpretation Letter Request Regarding 49 CFR § 174.304  
**Attachments:** DOC051016-05102016104950.pdf

Hi Shante/Alice,

Please submit this as a letter of interpretation.

Please let me know if you have any questions.

Thanks,  
Jordan

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**From:** Carl Peterson [<mailto:carl.peterson@nglep.com>]  
**Sent:** Tuesday, May 10, 2016 12:18 PM  
**To:** INFOCNTR (PHMSA); PHMSA HM InfoCenter  
**Cc:** [david.benz@ThompsonHine.com](mailto:david.benz@ThompsonHine.com); Mitch Walker; Carl Peterson; Don Robinson  
**Subject:** Interpretation Letter Request Regarding 49 CFR § 174.304

Please review the attached request and, pursuant to 49 CFR § 105.20, provide us with your interpretation of 49 CFR § 174.304 as it pertains to the rail transportation of loaded crude oil tank cars to a private track for temporary storage, where the tank cars will eventually be transported via a second rail movement to the end-user.

Note: The original of this request has been sent to your office by FedEx.

Please respond as expeditiously as possible to:

Don Robinson  
EVP  
NGL Crude Logistics, LLC  
Brookhollow Central II  
2900 North Loop West  
Suite 1250  
Houston, TX 77024  
Email: [don.robinson@nglep.com](mailto:don.robinson@nglep.com)

Thank you in advance for your time.

Carl Peterson



Carl Peterson | VP M&S Business Development  
NGL Crude Logistics, LLC  
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[carl.peterson@nglep.com](mailto:carl.peterson@nglep.com)



*Via electronic mail and U.S. Mail*

May 10, 2016

Standards and Rulemaking Division  
Pipeline and Hazardous Materials Safety Administration  
Attn: PHH-10  
U.S. Department of Transportation  
East Building  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590-0001

infocntr@dot.gov  
phmsa.hm-infocenter@dot.gov

Re: Interpretation Letter request regarding 49 CFR § 174.304

Dear PHMSA:

NGL Crude Logistics, LLC ("NGL") hereby requests an Interpretation Letter from the Pipeline and Hazardous Materials Safety Administration ("PHMSA") pursuant to 49 CFR § 105.20. In its normal business operations, NGL frequently ships crude oil via rail transportation between various points in the United States. On more than one occasion in the past few months, NGL has been prevented from shipping crude oil via rail because the relevant Class I railroad has informed NGL that the requested transportation is prohibited by 49 CFR § 174.304. NGL believes the cited regulation does not apply, and is seeking an Interpretation Letter from PHMSA on the issue, which is further described below.

All of the affected rail movements would have consisted of tank cars containing crude oil moving in a unit train and destined to a private track or a railroad track for which NGL has an exclusive written lease, thereby rendering the track "private" for PHMSA purposes.<sup>1</sup> For all of the movements, the loaded tank cars would have been stored on the private track temporarily.<sup>2</sup> Then, at some future date, NGL would have shipped the tank cars via rail transportation to NGL's customer at a new destination, where the customer would unload the crude oil. NGL would have been the consignee for the first movement (to storage), and NGL's customer would have been the consignee for the second movement.

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<sup>1</sup> 49 CFR § 171.8 (stating that "private track" includes railroad track which is held by a non-railroad pursuant to an exclusive lease).

<sup>2</sup> The exact time in storage cannot be known until NGL arranges the second rail movement, but the time would likely be on the order of several months. During storage, NGL would comply with all applicable laws and follow safety and security practices that are standard in the industry.

NGL was informed by the Class I railroad that the initial rail movement (to the private track for temporary storage) was prohibited because 49 CFR § 174.304 requires that crude oil tank cars be “unloaded” at the end of every rail movement. NGL has evaluated the cited regulation, and believes that no such prohibition exists. The regulation states that:

A tank car containing a Class 3 (flammable liquid) material, other than liquid road asphalt or tar, may not be transported by rail unless it is originally consigned or subsequently reconsigned to a party having a private track on which it is to be delivered and unloaded (see §171.8 of this subchapter) or to a party using railroad siding facilities which are equipped for piping the liquid from the tank car to permanent storage tanks of sufficient capacity to receive the entire contents of the car.

NGL believes the intent of the regulation is that unloading of Class 3 materials, when it occurs, must be from private track or railroad siding track having sufficient piping and storage tank facilities. Thus, the regulation does not prohibit rail movements to temporary storage as described above. There are numerous reasons supporting this interpretation of the regulation.

First, although the tank cars in NGL’s posited scenario would not initially be consigned to a track where unloading would occur, such tank cars would eventually be reconsigned to NGL’s customer via the second rail movement. Unloading would occur at the end of the second movement. Due to this “subsequent[] reconsign[ment]”, the regulation does not bar the first rail movement.

Second, interpreting § 174.304 to mean that unloading must always occur at the end of rail transportation leads to inconsistent results. The regulation gives two options for transportation by rail of tank cars containing Class 3 materials; the second option is for transportation consigned (or reconsigned) to a party using “railroad siding facilities” meeting certain requirements. The second part of the regulation says nothing about unloading being required, thus creating the anomalous result where storage of loaded tank cars is permitted on railroad track with certain piping facilities but not permitted on private track.

Third, even a cursory review of other PHMSA regulations reveals no support for the alleged prohibition. For example, the regulation immediately prior to § 174.304 states that:

Class 3 (flammable liquid) materials may not be loaded, transported, or stored in a rail car equipped with any type of lighted heater or open-flame device, or in a rail car equipped with any apparatus or mechanism utilizing an internal combustion engine in its operation.

49 CFR § 174.300(a). This regulation strongly suggests that Class 3 flammable liquids may be stored in rail cars that do not have a lighted heater, open-flame device, or internal combustion engine. The tank cars utilized by NGL do not have any of these features; hence, the rail movement to temporary storage should not be prohibited. Another PHMSA regulation clearly states that two toxic inhalation hazards (“TIH”), anhydrous ammonia and hydrogen chloride,

may be stored in tank cars on private track. See 49 CFR § 174.204(a)(2)(ii). There is no apparent reason why crude oil would be barred from loaded tank car storage if certain TIH materials are approved for such storage.

Fourth, the rail transportation of loaded crude oil tank cars to private tracks for storage is already occurring at various locations throughout the country.<sup>3</sup> It does not seem likely that multiple U.S. railroads and other businesses would participate in such rail transportation if it were barred by § 174.304. Obviously, there is currently an uneven application of PHMSA regulations to businesses in NGL's industry.

NGL appreciates the time and attention that PHMSA will provide to this Interpretation Letter request. The question is relatively simple: does 49 CFR § 174.304 prohibit the rail transportation of loaded crude oil tank cars to a private track for temporary storage, where the tank cars will eventually be transported via a second rail movement to the end-user? As described herein, NGL believes that the regulation does not prohibit such rail transportation, but NGL is seeking the interpretation of PHMSA to ensure that its operations are in compliance with applicable law.

As a result of being prevented from using rail transportation to temporary storage, NGL has already missed several commercial opportunities. NGL needs to know whether these commercial opportunities can continue to be pursued and, therefore, NGL respectfully requests that PHMSA issue the requested Interpretation Letter as expeditiously as possible.

Thank you for your assistance with this matter. NGL looks forward to hearing from you at the address given below.

Sincerely,

Don Robinson  
*Executive Vice President*  
*NGL Crude Logistics, LLC*  
[don.robinson@nglep.com](mailto:don.robinson@nglep.com)

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<sup>3</sup> See, e.g., Nicole Friedman and Bob Tita, *The New Oil-Storage Space: Railcars*, THE WALL STREET JOURNAL (February 28, 2016); Andrew Maykuth, *Storing crude oil in rail cars: Not widespread, but it does occur*, [http://articles.philly.com/2016-03-19/business/71658104\\_1\\_rail-cars-oil-prices-rail-line](http://articles.philly.com/2016-03-19/business/71658104_1_rail-cars-oil-prices-rail-line) (March 19, 2016); David Arno, *Players Seek Tank-Car Storage in Uneconomic Crude-By-Rail Environment*, <http://www.genscape.com/blog/players-seek-tank-car-storage-uneconomic-crude-rail-environment> (March 8, 2016).