



U.S. Department
of Transportation

Research and
Special Programs
Administration

Office of the
Chief Counsel

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

Int. No. 88-1-RSPA

INTERPRETATION

SOURCE: Clifford J. Harvison
President
National Tank Truck Carriers, Inc.
2200 Mill Road
Alexandria, Virginia 22314

FACTS: National Tank Truck Carriers, Inc. (NTTC) takes issue with a major oil company shipper of hazardous materials which recently commented in a DOT rulemaking docket as follows:

While we (the major oil company) may supply HM, we are not necessarily the shipper because the product was sold 'at the rack'. This means we sold it as it was transferred from a pipe or hose into the truck's cargo tank. Our customer, the 'shipper', arranged transportation.


NTTC disagrees with the apparent conclusion that transfer of ownership of a hazardous material concurrent with or prior to physical loading of the hazardous material into a truck's (or vessel's) cargo tank transfers HMTA shipper responsibilities (under 49 CFR 173.22 and other regulations under the HMTA) from the seller (which may own the storage tank, pipe or hose from which the material is being loaded) to the buyer of the material. In addition, NTTC states that, regardless of who owns the cargo tank into which the hazardous material is transferred, the transfer of ownership has no bearing on the "shipper" responsibilities under the Hazardous Materials Regulations (HMR) and thus the original owner, the oil company, remains liable as the "shipper".

INTERPRETATION: The word "shipper" is not specifically defined in the HMR (49 CFR Parts 170-179), due primarily to the fact that it is not possible for the Department to account for the numerous commercial arrangements that may exist under that concept. Although the word "shipper" does appear, it is used in an ordinary layman's manner rather than as a specific, technical term of art. Consequently, responsibilities generally are placed on "offerors" for performance of the functions associated with "offering" hazardous materials for transportation (e.g., see the general duty and applicability provisions in §§ 171.1, 171.2, 172.3, and 173.1).

The key issue in determining the regulatory responsibilities under the requirements in Parts 171, 172, and 173 is determining which parties perform which functions. This involves a case-by-case determination based upon all relevant facts. Any person who performs, attempts to perform, or, under the circumstances involved, is contractually or otherwise responsible to perform, any of the functions assigned by the HMR to the offeror, is legally responsible under the HMR for the proper performance of those functions. Any person's performance or attempted performance of any "offeror" functions may be evidence of that person's responsibility for performance of other "offeror" functions. In many cases, more than one person may be responsible for performing, or attempting to perform, "offeror" functions, and each such person may be held jointly and severally accountable for all or some of the "offeror" responsibilities under the HMR. (Note that responsibilities for compliance may be expressed in terms other than "offeror" or "offering" (e.g., preparers of hazardous materials for shipment, § 173.1(a)(2), and other persons performing required functions § 173.1(c)).)

Application of these principles to the situation described by the NTTC could result in the oil company or the purchaser (or the carrier if different than the purchaser) being held legally responsible for compliance with requirements associated with offering hazardous materials for transportation. That determination would require consideration of all relevant facts, including ownership of the materials, functions performed or undertaken by the parties, past practices of the parties, and contractual arrangements among the parties. No single factor, however, conclusively determines legal responsibility for

performance of "offeror" functions under the HMR. For example, transfer of ownership of the hazardous materials from the oil company to the purchaser does not, in itself, absolve the oil company of responsibility under the HMR for performance of "offeror" functions or impose them upon the purchaser. On the other hand, the oil company's original ownership does not necessarily result in the oil company being responsible under the HMR for performance of all "offeror" functions. The ownership of the hazardous materials before, during or after the transportation of hazardous materials is only one of many relevant factors which must be considered in determining regulatory liability under the HMR.


George W. Tenley, Jr.
Chief Counsel
Research and Special Programs
Administration

ISSUED: MAY 16 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Interpretation 88-1-RSPA: ABSTRACT

All relevant facts are considered in determining which persons are responsible, as offerors (the legally correct term, of which "shipper" is one frequently used synonym) of hazardous materials for transportation in commerce, for compliance with 49 CFR Parts 171, 172, and 173 as well as other HMR provisions imposing responsibilities upon offerors of hazardous materials. Any person who performs, attempts to perform, or, under the circumstances involved, is contractually or otherwise responsible to perform, any of the functions assigned to the offeror or shipper by the HMR is legally responsible under the HMR for their proper performance. Performance or attempted performance of any offeror or shipper functions may be evidence of responsibility under the HMR for performance of other offeror or shipper functions. No single commercial act, such as sale or transfer of ownership, is necessarily determinative of that responsibility.

Interpretation 88-1-RSPA: KEY WORDS

Hazardous Materials, Offer of for transportation

Offeror

Offering

Shipper

Interpretation 88-1-RSPA: SECTIONS AFFECTED

49 CFR 171.1

49 CFR 171.2

49 CFR 172.3

49 CFR 173.1

49 CFR 173.22