



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

SEP 22 2011

Mr. Daniel G. Shelton
President
HazMat Resources, Inc.
124 Rainbow Drive, #2471
Livingston, TX 77399

Ref. No.: 10-0225

Dear Mr. Shelton:

This responds to your letter regarding training requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to a truck driver who is responsible for loading and unloading hazardous materials from a cargo tank motor vehicle with the power unit attached. Specifically, you are unclear on whether the Occupational Safety and Health Administration (OSHA) or the Pipeline and Hazardous Materials Safety Administration (PHMSA) has jurisdiction over the transportation of hazardous materials in commerce. In addition, you ask if the HMR require:

- (1) The hazmat employer to provide the first aid training to this hazmat employee?
- (2) The hazmat employer to provide CPR training to the hazmat employee?
- (3) The hazmat employer to provide lock out/tag out training to the hazmat employee?
- (4) The hazmat employer to provide the hazmat employee a respirator, perform fit testing, have a medical monitoring program and be required to determine at a loading or unloading facility if the airborne concentration identified on the material safety data sheet is above the "Time Weighted Average" (TWA) and instruct the hazmat employee to don the respirator?
- (5) If this hazmat employee loaded, transported, or unloaded Anhydrous ammonia, would OSHA or PHMSA require the hazmat employer to provide the hazmat employee a respirator, perform fit testing, have a medical monitoring program and be required to determine at a loading or unloading facility if the airborne concentration identified on the

material safety data sheet is above the Time Weighted Average (TWA) and instruct the hazmat employee to don the respirator.

First, in response to your OSHA/PHMSA jurisdiction question – both PHMSA and OSHA have authority over the handling of hazardous materials in transportation. This authority is granted to PHMSA by 49 U.S.C. §§ 5103; 5106 and to OSHA through 49 U.S.C. § 5107(g)(2). The HMR applies to the transportation of hazardous materials in intrastate, interstate, and foreign commerce.

For example, under the HMR, a cargo tank must be attended by a 'qualified' person at all times when it is being loaded or unloaded. The person who is responsible for loading the cargo tank is also responsible for ensuring that it is so attended (§177.834(i)). A person is qualified if they have been made aware of the nature of the hazardous material (e.g., Anhydrous ammonia) being loaded or unloaded, have been instructed on emergency procedures, are authorized to move the cargo tank, and have the means to do so (§177.834(i)(4)). The attendee (i.e., qualified person) must also meet the prescribed hazmat employee training requirements of Part 172, Subpart H, which require general awareness, function-specific, safety, and security awareness training.

Second, in response to your questions regarding training – all of the training in question may be required. This decision is based on the functions performed by the hazmat employee. Training conducted by employers to comply with the hazard communication programs required by OSHA (29 CFR 1910.120 or 1910.1200) or other mandated training requirements may be used to the extent that such training satisfy the general awareness, function-specific, safety, and security awareness training requirements (See §172.704(b)).

For further information regarding OSHA's policies or training programs please access their website at www.dol.gov, or contact OSHA's Outreach Training Program via email at outreach@dol.gov, or by phone at (847) 725-7810. Please send written correspondence to:

Director
OSHA Office of Training and Educational Programs
2020 S. Arlington Heights Road
Arlington Heights, IL 60005-4102

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,



Ben Supko
Acting Chief, Regulations Development
Standards and Rulemaking Division

HazMat Resources, Inc.

Engram
\$172,700-704
Training
10-0225

124 Rainbow Drive, # 2471
Livingston, TX 77399

October 22, 2010

U.S. Department of Labor - OSHA
Attn: Thomas Galassi, Director
Directorate of Enforcement Programs
Room N3112
200 Constitution Ave., NW
Washington, DC 20210

Mr. Charles Betts
Acting Director, Office of Hazardous Materials Standards
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
East Building, 2nd Floor
Mail Stop: E21-317
1200 New Jersey Ave., SE
Washington, DC 20590

To Whom it May Concern,

Please accept this letter as an official request for an interpretation of the training requirements for a truck driver who is responsible for loading and unloading hazardous materials from a cargo tank motor vehicle with the power unit attached. The Department of Transportation (DOT) has for a long period of time regulated the loading, storage incidental to movement, transportation and unloading of hazardous materials. I and others believe based on information from the Occupational Safety and Health Administration (OSHA) web site: http://www.osha.gov/SLTC/trucking_industry/index.html that OSHA has no intention nor has any desire to exercise jurisdiction over the transportation of hazardous materials in commerce when the DOT has regulations governing those transportation activities. Here is an example of the information identified on the OSHA web site:

Jurisdiction

When another Federal agency has regulated a working condition, OSHA is preempted by Section 4(b)1 from enforcing its regulations. For example:

- The Department of Transportation (DOT) regulates driving over public highways, the health and safety of drivers involving their use of drugs and alcohol, hours of service, and use of seat belts. DOT also regulates the road worthiness of trucks and trailers and has specific requirements for the safe operation of trucks.

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- DOT has jurisdiction over interstate commerce while OSHA has jurisdiction over intrastate commerce except when handling hazardous materials. The DOT has issued regulations regarding the shipping, packaging, and handling of these materials. However, if a truck driver becomes an emergency responder in the event of a spill or other disaster, then OSHA has jurisdiction.
- The Federal Aviation Administration (FAA) regulates flight crews and some other aspects of the safety of ground crews. If there is a clause that covers a working condition in an operational plan negotiated between the carrier and the FAA, the FAA has jurisdiction over that working condition. Otherwise, OSHA covers most of the working conditions of ground crews and baggage handlers.
- Due to the DOT brake regulation, OSHA does not cite for failure to chock trailer wheels if a vehicle is otherwise adequately secured. DOT's regulation preempts enforcement and DOT has jurisdiction. However, if the vehicle is an intrastate truck, OSHA has jurisdiction. Only another Federal agency may preempt OSHA's jurisdiction.

Additionally, in a letter sent to Mr. Paul M. Bomgardner, Hazardous Materials Specialist for the American Trucking Association, 2200 Mill Road, Alexandria, Virginia 22314 on October 8, 1991 OSHA once again reaffirmed its position that their jurisdiction over truck drivers was limited to those employees who performed emergency response activities. A copy of this letter is attached in its entirety.

The DOT has attempted to clarify when transportation begins and ends. These regulations were published as a result of HM-223 but in actuality there are some who believe that HM-223 blurred the lines even more and allowed for dual regulation of employees by OSHA, EPA and the DOT even when these hazmat employees are clearly performing transportation functions. Additionally the DOT has clear training requirements for all hazmat employees identified in §49 CFR Part 172.700 – 704. Those training requirements include the following:

- **General Awareness and Familiarization Training**
This training that will enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of this subchapter;
- **Function Specific Training**
Applicable to the functions the employee is required to perform, i.e. loading gasoline in a cargo tank motor vehicle or loading compressed gasses in a cargo tank motor vehicle;
- **Safety Training**
Requires the hazmat employee to be trained on emergency response information and measures to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the work place, including specific measures the hazmat employer has implemented to protect employees from exposure; and
- **In-Depth Security Awareness Training**
This includes company security objectives, organizational security structure, specific security procedures, specific security duties and responsibilities for each employee, and specific actions to be taken by each employee in the event of a security breach.

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All these training requirements are DOT training requirements and it is my belief that the DOT has jurisdiction over these hazmat employees because they are performing transportation functions.

Following is a typical scenario: A person is employed as a truck driver (Hazmat Employee)¹ for a trucking company (Hazmat Employer)² and operates (drives) a cargo tank motor vehicle. Once the person leaves the truck yard they are the only person on the vehicle. The persons job duties include loading gasoline and propane at loading racks, transporting the gasoline and propane to either service stations or propane bulk plants and unloading the gasoline to the service station and unloading the propane at the bulk plant. In addition to these job duties the person may adjust their brakes, replace a light that is defective, may grease their tractor or trailer or perform other minor preventive maintenance authorized by the persons qualification to ensure the required parts and accessories identified in §49 CFR 392.7 are in proper working order. These minor preventative maintenance activities may be performed by the person either at a roadside parking area designed for trucks when they are required to check braking systems prior to descending a steep grade or on private property but at no time would these minor preventive maintenance activities be performed by the person in a fixed shop facility.

Please provide responses to the following questions based on the above scenario.

Transporting Hazardous Materials and Operating in Interstate Commerce

Question 1 – Does OSHA or DOT **require** the Hazmat Employer to provide first aid training to this Hazmat Employee?

Question 2 – Does OSHA or DOT **require** the Hazmat Employer to provide CPR training to the Hazmat Employee?

Question 3 – Does OSHA or DOT **require** the Hazmat Employer to provide lock out/tag out training to the Hazmat Employee?

Question 4 – Does OSHA or DOT **require** the Hazmat Employer to provide the Hazmat Employee a respirator, perform fit testing, have a medical monitoring program and be required to determine at a loading or unloading facility if the airborne concentration identified on the material safety data sheet is above the Time Weighted Average (TWA) and instruct the hazmat employee to don the respirator?

¹ Hazmat employee means (i) A person who is: (i) Employed on a full-time, part time, or temporary basis by a hazmat employer and who in the course of such full time, part time or temporary employment directly affects hazardous materials transportation safety; (ii) Self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous materials in commerce who in the course of such self-employment directly affects hazardous materials transportation safety; (iii) A railroad signalman, or (iv) A railroad maintenance-of-way employee.

(2) This term includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or who is self-employed, who during the course of employment: (i) Loads, unloads, or handles hazardous materials; (ii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. (iii) Prepares hazardous materials for transportation. (iv) Is responsible for safety of transporting hazardous materials; (v) Operates a vehicle used to transport hazardous materials.

² Hazmat employer means: (1) A person who employs or uses at least one hazmat employee on a full-time, part time, or temporary basis, and who: (i) Transports hazardous materials in commerce; (ii) Causes hazardous materials to be transported in commerce; or (iii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous materials in commerce;

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Question 5 – If this Hazmat Employee loaded, transported or unloaded Anhydrous Ammonia, would OSHA or DOT **require** the Hazmat Employer to provide the Hazmat Employee a respirator, perform fit testing, have a medical monitoring program and be required to determine at a loading or unloading facility if the airborne concentration identified on the material safety data sheet is above the Time Weighted Average (TWA) and instruct the hazmat employee to don the respirator?

Transporting Hazardous Materials and Operating in Intrastate Commerce

Question 6 – Does OSHA or DOT **require** the Hazmat Employer to provide first aid training to this Hazmat Employee?

Question 7 – Does OSHA or DOT **require** the Hazmat Employer to provide CPR training to the Hazmat Employee?

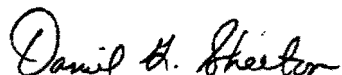
Question 8 – Does OSHA or DOT **require** the Hazmat Employer to provide lock out/tag out training to the Hazmat Employee?

Question 9 – Does OSHA or DOT **require** the Hazmat Employer to provide the Hazmat Employee a respirator, perform fit testing, have a medical monitoring program and be required to determine at a loading or unloading facility if the airborne concentration identified on the material safety data sheet is above the Time Weighted Average (TWA) and instruct the hazmat employee to don the respirator?

Question 10 – If this Hazmat Employee loaded, transported or unloaded Anhydrous Ammonia, would OSHA or DOT **require** the Hazmat Employer to provide the Hazmat Employee a respirator, perform fit testing, have a medical monitoring program and be required to determine at a loading or unloading facility if the airborne concentration identified on the material safety data sheet is above the Time Weighted Average (TWA) and instruct the hazmat employee to don the respirator?

I believe that we all understand it is impossible to identify every possible activity and every situation that a person may become involved in while transporting hazardous materials and for that reason I have attempted to narrow the focus to specific hazardous materials being transported in cargo tank motor vehicles. I thank you in advance for your prompt reply.

Sincerely



Daniel G. Shelton
President
HazMat Resources, Inc.

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