



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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

**MAY 07 2012**

Mr. Paul Bess  
President  
PBI Technology, Inc.  
P.O. Box 58356  
Webster, TX 77598

Ref. No. 10-0251

Dear Mr. Bess:

This responds to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to hazardous materials transportation functions performed by multiple parties. I apologize for the delay in responding and any inconvenience it may have caused. Your questions are paraphrased and answered as follows:

- Q1. Through a contractual agreement with a manufacturing facility, a vendor assumes all responsibilities for regulated hazardous materials functions. As such, the vendor fills and delivers Intermediate Bulk Containers (IBCs), portable tanks, and cylinders, it either owns or leases, to a manufacturing facility using its own vehicles and personnel. Vendor personnel unload the packages and connect them to process equipment where they are consumed by the manufacturing facility. When empty, vendor personnel return to pick up the packages containing residual hazardous materials and perform all pre-transportation and transportation functions. Under this scenario, is the vendor, the manufacturing facility, or both, responsible for compliance with the HMR?
- A1. Based on your description, the vendor performs all offeror and carrier functions and therefore is responsible for ensuring that the shipments conform to the requirements of the HMR. Specifically, an offeror is responsible for ensuring proper labeling and shipping papers under §§ 172.200, 172.204, and 172.400; and an offeror or carrier (when assigned the function) is responsible for markings and placards under §§ 172.300 and 172.500. Package manufacturers and those who perform requalification functions are responsible for the compliance of packagings; however the offeror must use and prepare the package correctly and ensure it is properly maintained. (See §§ 173.22, 178.2(a)(2), 178.601, 178.801(b), 180.3, and 180.205.)

Please note that if you perform any pre-transportation functions (as defined in § 171.8) related to the residue shipment, including securing the closure on a package,

preparing a shipping paper, providing emergency response information, or certifying that a shipment is in proper condition for transportation in conformance with HMR requirements, you are responsible for compliance with the HMR.

- Q2. Under the same scenario in Q1, if vendor personnel perform all pre-transportation functions but instead used a commercial carrier to transport the packages away from a manufacturing facility, is the answer the same?
- A2. Yes, the answer is the same. As specified in § 171.2(a), each person who performs a function governed by the HMR must perform that function in accordance with the HMR. The fact that the carrier is commercial, private, or otherwise in this scenario is irrelevant.
- Q3. Occasionally, vendor personnel will deliver packages of hazardous and non-hazardous materials intended for permanent on-site storage once connected to process equipment. As needed, the packages are refilled by vendor personnel on-site without disconnecting from the process equipment. For United Nations (UN) standard or Department of Transportation (DOT) specification packagings, is the vendor, the manufacturing facility, or both, responsible for compliance with the HMR (e.g., loading/unloading)?
- A3. In the scenario you describe, the vendor is responsible for compliance with the HMR for functions it performs (e.g., loading/unloading, attendance). Conversely, under § 171.1(d)(3), the storage of a package containing a hazardous material after its delivery by a carrier to its destination is no longer subject to the requirements of the HMR. Further, any function (e.g., movement) performed exclusively within a contiguous facility boundary by the consignee, where public access is restricted, is not subject to the requirements of the HMR. However, please note that other regulations and standards of other Federal, state, and local agencies may apply. For example, the Occupational Safety and Health Administration (OSHA) Regulations of the U.S. Department of Labor, at 29 CFR 1910.110, require DOT specification pressure vessels containing liquefied petroleum gas and used in the workplace to conform with the HMR.

Under § 171.2(g), no person may represent or offer a packaging as meeting the requirements of the HMR unless the packaging is maintained, marked, and retested in accordance with the applicable requirements of the HMR when transported in commerce. These requirements are applicable whether or not the packaging is used for the transportation of a hazardous material. Therefore, if the UN standard or DOT specification packaging used at the manufacturing facility is not maintained in accordance with the HMR, we recommend you securely cover any identifying marks or specification plates representing it as such.

- Q4. When applicable, who is responsible for providing or retaining copies of a special permit governing packagings, the vendor or the manufacturing facility?

A4. In the scenario you describe, the vendor is responsible. In general, the holder of a special permit is required, by the terms of the permit, to retain a copy of it. Additionally, anyone acting under the special permit should have a copy in order to ensure compliance with its terms, in accordance with §§ 171.2 and 173.22a(b), and may be required to retain a copy under the terms of the special permit. As specified in § 171.2, it is an offeror (shipper) responsibility to comply with all applicable requirements of the HMR, including a special permit issued under the HMR. The offeror must ensure packagings used to transport hazardous materials are manufactured, assembled, and marked in accordance with any applicable special permit. (§ 173.22(a)(2)(v).) The offeror is also required to provide a copy of the special permit to a carrier, when the permit contains requirements relevant to the carrier. (§ 173.22a(c).)

Based on your description, the vendor is acting as the offeror and carrier and is therefore responsible for retaining and providing copies of relevant special permits. If the manufacturing facility is not the holder of the special permit, does not perform any activities authorized under the special permit, and does not act as the offeror or carrier of any shipments, then it is not responsible for retaining or providing copies of the permit.

I trust this satisfies your inquiry. 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  
§171.8  
§171.1  
§173.22  
Applicability  
10-02 51

# PBI Technology, Inc.

November 23, 2010

Mr. Charles E. Betts  
Director, Office of Hazardous Materials Standards  
U.S. DOT/PHMSA (PHH-10)  
1200 New Jersey Avenue, SE East Building, 2<sup>nd</sup> Floor  
Washington, DC 20590

Dear Mr. Betts,

Please clarify the requirements under the Hazardous Material Regulations in regards to the following scenario:

A manufacturing facility contracts with multiple vendors to provide flammable liquids, corrosives, gases, and non-regulated materials in IBC's, portable tanks, and cylinders, all of which are owned or leased by the vendor. The vendor fills the packaging and delivers the packages to the manufacturing site (private carrier), using vendor employees to transport, unload, and make connections to manufacturing facility process equipment. When the materials have been consumed and the packages are empty with only residue remaining, the vendor's employees load the packages onto transport equipment provided by the vendor. The vendor's employees generate the shipping papers to move the packages from the manufacturing site. No employees of the manufacturing facility perform any functions of a hazmat employee as defined in 49CFR § 171.8.

Questions:

- (1) Is the manufacturing facility responsible to ensure DOT compliance on the vendor owned IBC's, portable tanks, and cylinders delivered to and shipped from their site by the vendor's employees? For example, is the manufacturing facility responsible to ensure that IBC's and portable tanks are within prescribed retest and inspection dates, are properly marked, labeled, and placarded, that special permit and exception markings are correct, or that shipping papers generated by the vendor meet the requirements of the HMR?
- (2) Instead of using vendor equipment (private carrier), occasionally the vendor contracts with a public carrier to transport packages containing hazardous materials to and from the manufacturing site. The vendor employees continue to perform all hazmat employee functions. Is the manufacturing facility responsible to ensure DOT compliance for pre-transportation or transportation functions?
- (3) In some instances, IBC's and portable tanks are filled with regulated and non-regulated mixtures/solutions and delivered to the manufacturing site, where they are connected to process equipment owned by the manufacturing facility and used as permanent storage. As needed, the packages are refilled by the vendor's employees without disconnecting or removing from the manufacturing site. Is the manufacturing facility responsible to ensure DOT compliance for any loading/unloading functions performed by the vendor's employees?
- (4) If IBC's, portable tanks, or cylinders are authorized by DOT special permits or exemptions, is the vendor required to provide copies of the special permits or exemptions or must copies be retained by the manufacturing facility?

Your assistance is greatly appreciated.

Best regards,

*Paul Bess*

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