



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

FEB 13 2012

Mr. Jim La Porte
AT & T Inc.
1670 Axtell
Troy, MI 48084

Ref. No. 12-0015

Dear Mr. La Porte:

This is in response to your email regarding the shippers' certification prescribed in § 172.204 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you present the following scenario and ask whether it is prohibited for your company AT & T to hire a third-party contractor to offer a hazardous material under the HMR.

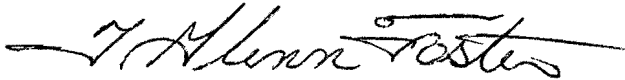
According to your letter, AT & T contracts with Company X to remove and ship compressed gas cylinders classified as a hazardous material. Company X will use its own personnel to prepare hazardous materials shipments in accordance with the applicable requirements of the HMR. In such cases, Company X, on AT & T's behalf, signs the shipper's certification on the shipping paper. It is your understanding that the HMR does not prohibit hiring a third party contractor to prepare, package and transport materials in accordance with the applicable requirements to the HMR.

Your understanding is correct. At your company's direction or through contractual arrangement, a third party may perform the functions of an offeror (shipper), such as signing the certification statement on a shipping paper to certify that hazardous materials are being offered for transportation in accordance with the HMR. Under the HMR, any person performing functions of an offeror, as defined in § 171.8, must take responsibility for performing those functions in accordance with the applicable requirements. Each person who performs a function governed by the HMR is responsible for complying with the appropriate requirements of the HMR.

It should be noted that because Company X in your scenario is acting as an agent of AT & T, AT & T may be held responsible for Company X's non-compliance with the HMR. The degree of regulatory liability is usually determined on a case-by-case basis, and is dependent on the facts of the specific situation.

I hope this information is helpful. Please contact us if you require additional assistance

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

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

Benedict
\$173.22
\$171.1

Drakeford, Carolyn (PHMSA)

From: McIntyre, Joan (PHMSA)
Sent: Wednesday, January 11, 2012 3:54 PM
To: Drakeford, Carolyn (PHMSA)
Subject: RE: DOT Question

\$173.301
Shipper's Responsibility
12-0015

-----Original Message-----

From: McIntyre, Joan (PHMSA)
Sent: Wednesday, January 11, 2012 3:23 PM
To: 'LA PORTE, JAMES J'
Subject: RE: DOT Question

Mr. LaPorte,

I have passed this on to our interp letter coordinator, Carolyn Drakeford, for assignment for a written reply.

Joan McIntyre

-----Original Message-----

From: LA PORTE, JAMES J [<mailto:jl7454@att.com>]
Sent: Wednesday, January 11, 2012 9:59 AM
To: McIntyre, Joan (PHMSA)
Subject: Re: DOT Question

Joan,
Hello! Here is another question that I need a written reply for.

We are contemplating a process for removal of small amount of compressed gas cylinders through a pail system where a pail/container is sent to our location and a vendor picks it up when it is full. These will be going out on a DOT hazardous materials bill of lading and will carry a DOT label.

The transporter has agreed to act as our agent and prepare and sign the bill of lading on behalf of our company and to assure that the package is suitable for transport (i.e. labels). They have agreed to perform HAZAMAT training for their employees. My understanding is that the rules do not prohibit hiring a third party contractor to prepare, package, and transport materials. The company would have a duty to ensure that the waste hauler has the right training and follows the rules and abide by the contract.

Is this interpretation correct. Can the person picking up these containers act as an agent for the company and sign the shipping papers on our behalf and make sure the package is OK for shipment (i.e. labeled properly) prior to transport. I did find a similar interpretation (PHMSA Interpretation #04-0183)

Regards,

Jim La Porte