



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

SEP 12 2012

Mr. Kenneth M. Kastner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth St., N.W.
Washington, D.C. 20004

Reference No. 12-0132

Dear Mr. Kastner:

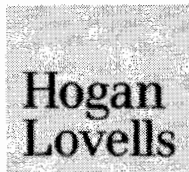
This is in response to your request for clarification of the Hazardous Materials Regulations (HMR; 49 CFE, Parts 171-180) applicable to attendance requirements specified in § 177.834(i)(3). In your letter, you state that you have a client that conducts such operations from a shelter that, although 25 feet from the cargo tank, would be more than 25 feet in walking distance if the attendant were to leave the shelter. You explain this is due to the configuration of the shelter's exit, which is in the back of the shelter. You also state that in the event of an emergency, all operations, such as closing valves can be performed without leaving the shelter. You ask whether "within 7.62 m (25 feet) of the cargo tank" means walking distance to the cargo tank or a 25 foot view of the cargo tank.

Section 177.834 requires that, except for unloading operations subject to §§ 177.837(d), 177.840(p), and 177.840(q), a qualified person "attends" the unloading or unloading of a cargo tank if, throughout the process, he is alert and within 7.62 m (25 feet) of the cargo tank. For purposes of § 177.834(i)(3), "within 7.62m (25 feet)" means a straight line distance; an actual walking distance and not a field of view. It is the opinion of this Office that considering the content of your letter and attachment, and considering that all controls can be performed without leaving the shelter, you may wish to apply for a special permit in accordance with Part 107, Subpart B, "Special Permits." Section 107.105 specifies the elements that each application must include, one of which is demonstrating an equivalent level of safety to the HMR. Section 107.105 also includes the various ways you may submit your application. The telephone number for the Office of Hazardous Materials Special Permits and Approvals is 202/366-4535.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,

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



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McIntyre
§177.834(i)
Loading and Unloading
12-0132

June 15, 2012

Via E-Mail

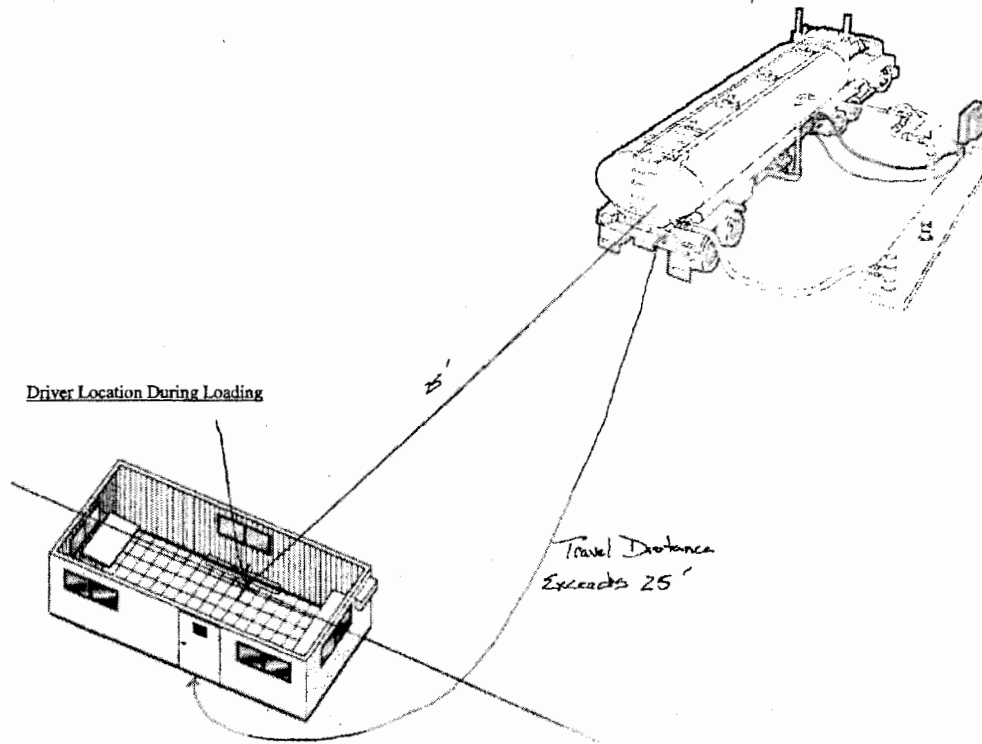
Mr. Charles E. Betts
Director, Standards and Rulemaking Division
Pipeline & Hazardous Materials Safety Administration (PHH-10)PHH-10
U.S. Department of Transportation, East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Request for Interpretation Regarding Loading and Unloading Attendance Requirement

Dear Mr. Betts:

Please accept this letter as an official request pursuant to 49 CFR § 105.15(a)(4) for an interpretation of the attendance requirement at 49 CFR § 177.834(i), which requires that a "cargo tank must be attended by a qualified person at all times when it is being loaded." In turn, 49 CFR § 177.834(i)(3) provides that a qualified person is considered to be attending "the loading or unloading of a cargo tank, if throughout the process, he is alert and is within 7.62 m (25 feet) of the cargo tank." On behalf of our client, we are requesting clarification on what DOT means by being within 25 feet of the cargo tank, specifically whether DOT requires the qualified person to be within a 25 foot view of the cargo tank or a 25 foot walking distance of the cargo tank.

During typical loading operations, our client's attendants conduct loading from a shelter like the one shown in the figure below.



This shelter contains loading controls, including an emergency stop (E-Stop) that the attendant can activate to immediately terminate loading of the cargo tank. Additionally, because loading operations may include loading of a compressed gas, the shelter provides occupational safety to the attendant. The shelter also provides relief to the attendant from inclement weather.

The shelter has windows that provide a direct line of sight of the cargo tank and loading operation. The attendant standing in the shelter and looking out the window will be within a 25 foot direct view of the cargo tank, and within a foot of the emergency controls. But at some loading areas at certain plants, the attendant is not within a 25 foot walking distance to the tank truck. This is because in order to walk to the tank truck, the attendant must turn around, exit the door, walk along the shelter and then arrive at the tank truck. This process adds several feet of walking distance, which in some cases, will exceed 25 feet.

We hope you will agree that the shelter scenario described above is a practical, safe and acceptable approach that meets the intent of the rule. The rule itself seems to focus on the ability of the attendant to view the loading operation closely and react to it quickly if a problem arises. For example, the last sentence of 49 CFR § 177.834(i)(3) provides, "The qualified person attending the unloading of a cargo tank must have an unobstructed view of the cargo tank and delivery hose to the

maximum extent practicable during the unloading operation." In addition, DOT's preamble discussions of the rule suggests that DOT was mostly concerned that the attendant be able to view loading and unloading and react as necessary to situations. Specifically, the December 10, 1997 preamble states that DOT's "*position consistently has been that the plain language of § 177.834(i) requires an attendant to maintain an unobstructed view of the cargo tank and be within 25 feet of the cargo tank.*" 62 FR at 65190, (December 10, 1997). Additionally DOT explains, "*the rule clearly requires an operator be in a position from which the earliest signs of problems that may occur during the unloading operation are readily detectable, thereby permitting an operator to promptly take corrective measures, including moving the cargo tank, actuating the remote means of automatic closure of the internal self-closing stop valve, or other action, as appropriate.*" 62 FR at 44044 (August 18, 1997). Our client's shelters enable the attendant to have an unobstructed view within 25 feet of the cargo tank and to activate an E-Stop from within the shelter.

If DOT, however, determines that the qualified person needs to be within a 25 foot walking distance to the cargo tank, the attendant would have to step out of the shelter during the loading operation, and in that case, he would no longer have immediate access to the E-Stop. An alternative of reconstructing shelters to be closer would require an unreasonable business expense that would not result in safer or more effective "attendance" at the loading operation. Therefore, we hope you will agree that an attendant that is within a 25 foot view of the tank truck satisfies the requirement in 40 CFR § 177.834(i)(3) even if he is not within a 25 foot walking distance of the tank truck.

Please call me if you have any questions regarding this matter. We thank you in advance for your attention to it.

Sincerely,



Kenneth M. Kastner

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