



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

DEC 14 2012

Ms. Karen Scheel
Total Petrochemicals & Refining USA, Inc.
1201 Louisiana St. Ste. 1800
Houston, TX 77002

Ref No.: 12-0237

Dear Ms. Scheel:

This is a response to your October 22, 2012 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-185) applicable to incident reporting. Specifically, you describe a spill of approximately 3 gallons of Sulfuric Acid that occurred during the unloading of a DOT 407 specification cargo tank motor vehicle. You indicate that in this scenario, the carrier was still present and was working jointly with the consignee to unload the material using a consignee-owned unloading line. Based on this scenario you ask; if the product is still considered in transportation and who is responsible for completing the Hazardous Materials Incident Report on DOT Form F 5800.1, as required by § 171.16.

As required in § 171.16, each person in physical possession of a hazardous material at the time an incident specified in § 171.16 occurs during transportation (including loading, unloading, and temporary storage) must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 within 30 days of discovery of the incident. According to § 171.1(c), transportation begins when a carrier takes physical possession of a hazardous material for the purposes of transporting it and continues until the hazardous material is delivered to the destination indicated on a shipping paper, package marking, or other medium. Furthermore, § 171.1(c)(3) explains that transportation of a hazardous material in commerce includes “emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel.”

In the scenario you describe, the material is considered to be in transportation and in the possession of the carrier until delivery to the consignee is complete. Incidents that occur while the carrier that delivered the hazardous material is observing or participating in unloading operations must be reported by the carrier because the carrier is deemed to be in

possession of the hazardous material at that point. In the scenario you provide, the carrier must complete and submit a DOT incident report. However, the HMR does not prohibit the consignee from completing and submitting the incident report.

I hope this information is helpful. If you have any more questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Robert Benedict
Chief, Standards Development
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

Suchak
§171.16
§171.8

From: INFOCNTR (PHMSA)
Sent: Tuesday, October 23, 2012 10:05 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Hazardous Material Incident Reporting Requirements

Incident Reporting
12-0237

Hi Carolyn,
We received the following request for a formal letter of interpretation.
Thanks,
Victoria

From: Karen SCHEEL [<mailto:karen.scheel@total.com>]
Sent: Monday, October 22, 2012 12:06 PM
To: INFOCNTR (PHMSA)
Subject: Hazardous Material Incident Reporting Requirements

I am writing to request clarification of the Hazardous Material Incident Reporting requirements.

While unloading hazardous material (sulfuric acid) from a bulk packaging (truck), a leak occurred on a consignee-owned unloading line. The driver was present and participated in the unloading process along with consignee personnel. The line was located between the delivering truck and the consignee tank, to which the sulfuric acid was being unloaded. Approximately 3 gallons sulfuric acid were spilled to containment. There were no injuries or exposures.

According to 49CFR171.8, "Unloading Incidental to Movement" means "..for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel...."

49CFR171.6(a) states that "each person in physical possession of a hazardous material...must submit a Hazardous Materials Incident Report on DOT Form F 5800.1"

Because the carrier was still present and observing or participating in the unloading, it appears that he was still in possession of the material. However, because the unloading line belonged to us, the consignee facility, it caused us to look further into the regulation to determine whether it made sense for the carrier to report a leak on our facility unloading line.

In addition, on the form "Instructions for Completing the Hazardous Materials Incident Report -Department of Transportation Form F 5800.1", in the section titled "Who Must Complete the Report" it is stated: "Any person in possession of a hazardous material during transportation, including loading, unloading and storage incidental to transportation must report to the Department of Transportation (DOT) if certain conditions are met. This means that when the conditions apply for completing the report, the entity having physical control of the shipment is responsible for filling out and filing form 5800.1. For example, if a shipper is carrying hazardous material and the material is in the process of being unloaded by the consignee and there is an incident involving this material, the consignee is responsible for filling out and filing the form".

If a consignee and carrier are jointly working together to complete the unloading, and the product has moved into the consignee-owned unloading line, 1) is the product still in transportation? and 2) If applicable, should the carrier be expected to file a 5800 report for an incident involving the consignee-owned unloading equipment, or should the consignee make the report?

I appreciate your assistance in clarification of this requirement.

Thank you,
Karen

Karen Scheel

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