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Transportation/Hazardous Materials: Pipeline and Hazardous Materials Safety Administration Interpretive Letter Addressing Definition of Hazmat Employee

02/10/2023

The United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) addressed in a December 6th interpretive letter the application of the Hazardous Materials Regulations (“HMR”) to the definition of a hazmat employee. See Ref. No. 22-0048.

PHMSA was responding to a May 11, 2022, email from Mr. Tom Morales (CPNPP Training Support Manager) asking:

. . . whether certain employees are considered hazmat employees and therefore subject to training in accordance with 49 CFR Part 172, Subpart H.

Mr. Morales first asked whether facility equipment operators (i.e., who operate on-site bulk storage tanks in preparation for loading with hazardous materials from a cargo tank truck [i.e., operate the valves on the tanks]) meet the definition of a hazmat employee. Their duties are stated to include controlling the flow valves of the bulk storage system after the carrier connects the delivery hose from the cargo tank truck.

PHMSA states that such employees are considered hazmat employees. The basis for this conclusion is that the facility equipment operators:

. . . directly affect the transportation—which includes unloading from a bulk package—of the hazardous materials and are subject to the training requirements.

Also noted is the equipment operators’ direct involvement in managing the flow of hazardous materials for unloading while in the presence of carrier personnel. As a result, PHMSA states that they are considered to be performing a function subject to the HMR.

Second, Mr. Morales asked whether the definition of a hazmat employee is applicable to:

. . . chemistry technicians who, prior to accepting a delivery, sample the product (e.g., fuel) to ensure that the material meets certain specifications.

PHMSA states that the chemistry technicians are not considered hazmat employees. This is caveated by the statement that this is true as long as the sampling performed does not directly affect the transportation (including unloading from a bulk package) of the hazardous material.

Third, the same question is asked regarding “shield mechanics.” These employees are described as being responsible for removing a security shield during delivery of diesel fuel to allow it to be offloaded into underground storage tanks. The shield mechanics are stated to only be responsible for removing security shields that allow unloading to occur. They do not perform any unloading of the hazardous materials.

PHMSA states the shield mechanics are not hazmat employees. It states that if the removal of the shields by the mechanic does not directly affect the transportation of the hazardous material, then the employee is not a hazmat employee.

Finally, the question is posed as to whether mechanics who offload hazardous materials from the transport vehicle in the presence of the carrier once the vehicles have arrived onsite constitute a hazmat employee.

PHMSA states that such mechanics would fit within the definition of a hazmat employee. § 171.8 is cited which provides that a hazmat employee includes:

. . . an individual who, during the course of employment, loads, unloads, handles hazardous materials, or operates a vehicle used to transport hazardous materials.

A copy of the December 6th PHMSA letter can be downloaded [here](#).