



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 24 2019

Cindy Van Duyne
Compliance Manager
Canal Terminology Company
23213 S. Youngs Road
Channahon, IL 60410

Reference No. 18-0155

Dear Ms. Van Duyne:

This letter is in response to your December 6, 2018, email and subsequent phone conversation requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to residue of molten sulfur on tank cars during transloading. You describe a scenario in which your company, Canal Terminology Company (CTC), performs the following activities during transloading operations:

- Sets up tank cars to receive molten sulfur;
- Secures the tank cars for shipment after being filled with molten sulfur;
- Serves as the shipper of record on shipping papers.

You state that an outside carrier conducts the physical transfer of the molten sulfur from the cargo tanks to the tank cars. You ask whether CTC would be cited for a violation if there is excessive amount of molten sulfur on the exterior of the tank car. As clarified in our phone conversation, you indicate that the residue of molten sulfur is from either: (1) a previous shipment (i.e., residue is found on an empty tank car prior to transloading); or (2) after the tank car is filled by the outside carrier.

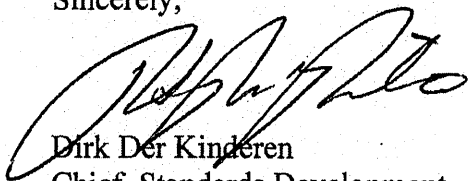
In accordance with § 171.2(e), no person may offer or accept a hazardous material for transportation in commerce unless the hazardous material shipment properly complies with the HMR. Section 173.24(b)(4) states that there will be no hazardous material residue adhering to the outside of the package during transport and § 174.57 specifies that all hazardous materials leaked from a rail car must be carefully removed. Therefore, no package should be offered or accepted for transportation unless it conforms to the HMR, which includes ensuring there is no residue outside of the tank car. Regardless of the state of the tank cars from a previous shipment or another entity performing the transloading, since your company is acting as a shipper and carrier (by accepting a transload), you have the responsibility for ensuring the hazardous material is in a condition for shipment as required or authorized by the HMR.

However, as noted in your request, on March 11, 2013, PHMSA published a final rule titled "Hazardous Materials; Miscellaneous Amendments (RRR)" [HM-218G; 78 FR 15303] that addressed a petition for rulemaking (P-1581), which: (1) added The Sulphur Institute's (TSI) "Molten Sulphur Rail Tank Car Guidance" document to Table 1 of § 171.7 as a material not incorporated by reference; and (2) created a new special provision R1 (see § 172.102) to reference offerors of tank cars containing sulfur, molten, or residue of sulfur, molten to TSI's document to identify tank cars that may pose a risk in transportation due to the accumulation of formed, solid sulfur on the outside of the tank. In the HM-218G final rule, PHMSA specifies that although §§ 173.24(b)(4) and 174.57 indicate that no residue is permitted on the outside of the tank car, "minimal levels of sulfur residue on the outside of a rail tank car pose minimal transportation risk due to physical state, chemical properties, and amount" and that there are difficulties in removing dried sulfur residue from the tank car while in transportation.

Regarding enforcement actions, in general, whenever a hazardous material has not been offered or transported in compliance with the HMR, the Department of Transportation will attempt to identify and bring an enforcement proceeding against the person who offered the noncomplying shipment into transportation. See the enclosed formal interpretation of regulations regarding carrier responsibility when accepting hazmat for transportation in commerce (June 4, 1998; 63 FR 30411).

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



Dirk Der Kinderen
Chief, Standards Development
Standards and Rulemaking Division