



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

1-10-2005

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Mark V. Rosenker, Vice Chairman
National Transportation Safety Board
Washington, D.C. 20594

Dear Mr. Rosenker:

Thank you for your letter of December 15, 2004, regarding the proposal of additional safety regulations concerning the transport of hazardous materials. According to your letter, Safety Recommendation R-04-12 is one of several safety recommendations arising from the National Transportation Safety Board's (NTSB) investigation of recent accidents involved with the offloading of railroad tank cars.

While additional recommendations were directed to the Department of Transportation (DOT) and to the Occupational Safety and Health Administration (OSHA), Safety Recommendation R-04-12 was directed to the Environmental Protection Agency (EPA):

In cooperation with the Research and Special Programs Administration and the Occupational Safety and Health Administration, develop regulations that require safe operating procedures to be established before hazardous materials are heated in a railroad tank car for unloading; at a minimum, the procedures should include the monitoring of internal tank pressure and cargo temperature (R-04-12).

First, I would like to acknowledge that we share the NTSB's concerns for ensuring the safety of operations of hazardous materials being unloaded from railroad tank cars. The loss of life, the injuries, the property damage, and the disruptions to peoples' activities described in the incidents cited in your December 15 letter are not acceptable.

Until recently, the unloading of railroad tank cars was a regulated activity under the Hazardous Materials Regulations (HMRs) administered by DOT/RSPA. EPA does have responsibility for the regulation of hazardous waste management activities, including transportation, under Subtitle C of the Resource Conservation and Recovery Act (RCRA). However, our RCRA statutory authorities require us to coordinate any requirements applicable to hazardous waste transportation with DOT, and to develop and implement regulations that are consistent with DOT's requirements for hazardous materials transportation. Since the hazardous wastes that EPA regulates under RCRA Subtitle C are also hazardous materials within the HMRs when they are transported, EPA has taken the position that the HMRs define the requirements that generally apply to hazardous waste transportation. Therefore, our waste transportation regulations reference the applicable HMR requirements to maintain consistency and avoid duplication of effort by our two agencies.

Until DOT determined in the recent HM-223 rulemaking that the unloading of railroad tank cars by consignee facility personnel would no longer be considered a regulated activity under the HMRs, there was no need for EPA to consider the development of a hazardous waste

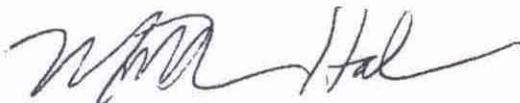
regulation addressing the unloading of railroad tank cars. Prior to the HM-223 Rule determination, the rail tank car unloading provisions of 49 CFR 174.67 applied to anyone unloading a railroad tank car, whether the hazardous material involved was a product or a waste. In that setting, any EPA requirements for hazardous wastes would be duplicative.

As you note in your December 15 letter, the NTSB has recommended that DOT reconsider the new policy it announced in HM-223 on the unloading of railroad tank cars by consignee personnel. One possible outcome from this recommendation would be to restore the HMR requirements on unloading of tank cars to their prior scope and effect. EPA believes that there may be merit to the recommendation that DOT continue to exercise jurisdiction over the unloading of railroad tank cars. In contrast, if EPA were to take regulatory action, EPA could only exercise jurisdiction over the unloading of hazardous wastes and not over the products or non-hazardous wastes which might exhibit the same properties and risks during their heating and unloading. Therefore, we would want to discuss with DOT the possibility of reinstating its previous policy on railroad tank car unloading or other possible approaches before EPA would consider undertaking a regulation that would only afford piecemeal protection.

At this time, EPA cannot commit to promulgate any regulation addressing the unloading of railroad tank cars as suggested by the specific recommendations referenced in Safety Recommendation R-04-12. EPA will be available to consult with officials in the Research and Special Programs Administration (RSPA) of DOT and in OSHA to identify the scope of any gaps in the federal regulatory requirements, and to then determine how to address this problem in the most effective manner.

Thank you for transmitting the safety recommendation and supporting information on railroad tank car incidents in your December 15 letter to us. If you would like to discuss this matter in greater detail, please contact Rich LaShier (703-308-8796) in my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Hale", written in a cursive style.

Matthew Hale, Director
Office of Solid Waste