



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

NOV 15 2005

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mark V. Rosenker, Acting Chairman
National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, DC 20594

Dear Mr. Rosenker:

Thank you for your letter of September 22, 2005, regarding the status of the National Transportation Safety Board (NTSB) Safety Recommendation R-04-12. This recommendation suggests that the Environmental Protection Agency (EPA) cooperate with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Occupational Safety and Health Administration (OSHA) and develop regulations addressing safe operating procedures that would be established before hazardous materials are heated in a railroad tank car for unloading. The recommendation was provided to EPA in December 2004, as the result of the Safety Board's investigation of a railroad tank car accident in Freeport, Texas.

In our January 10, 2005, letter on this issue signed by Matthew Hale, Director, Office of Solid Waste, we advised the NTSB that EPA could not commit at that time to a regulation addressing the unloading of railroad tank cars. Our letter explained our belief that it would be more appropriate to consult with DOT and OSHA to determine what gaps exist in the respective programs, as well as the most effective means for closing any gaps. Your September 22, 2005 letter explains that NTSB considers our response to be unacceptable, because EPA has not been sufficiently proactive in working with DOT and OSHA to accomplish the objectives of the Safety Recommendation.

Since PHMSA, OSHA, and EPA share responsibility for the regulation of tank car unloading activities, we have met, discussed the issue carefully, and have concluded that working together to address these operations is the most appropriate way to proceed, rather than having each agency address the issue through its own limited authorities. To that end, our hazardous waste staff in the Office of Solid Waste are working with PHMSA to draft a safety advisory notice announcing the joint advice of PHMSA, OSHA, and EPA on procedures which should be followed by facilities that heat rail tank cars prior to their unloading or transloading to ensure that such operations are conducted safely. The safety advisory notice is in draft form and is under review by the three

agencies. The notice will address the monitoring of the heat input applied to the cargo, monitoring of the pressurization of the tank car, and other provisions to avoid the situation where pressurization might exceed the tank car's test pressure.

One of the major advantages of the safety advisory is that it can be issued much more quickly than regulations, since the advisory is not subject to public notice and comment requirements. It is important to note that we estimate it would require EPA between 2 and 4 years to promulgate a final regulation. We believe that providing safety information in a more timely manner to those performing unloading operations will address the safety issues NTSB has identified and will help to prevent future accidents.

We appreciate your continued interest in resolving Safety Recommendation R-04-12, and request that you classify the recommendation as "Open - Acceptable Action." Thank you for consideration of our request.

We would be happy to meet with you or a member of your staff to discuss this matter further. If you have any questions, please contact me or Robert Dellinger, Hazardous Waste Identification Division, at (703) 308-8252.

Sincerely,

A handwritten signature in cursive script, reading "Thomas P. Dunne". The signature is written in black ink and extends across the width of the page.

Thomas P. Dunne
Acting Assistant Administrator