



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

**AUG 25 2000**

Mr. John Foglio  
Manager, Hazardous Materials  
Transportation Safety  
Degussa Corporation  
65 Challenger Road  
Ridgefield Park, NJ 07660

Ref. No. 99-0066

Dear Mr. Foglio:

I apologize for the delay in responding to your letters concerning the requirement in 49 CFR 173.31(d)(1)(vi) to carefully inspect a frangible (rupture) disc in a pressure relief device prior to each hazardous material shipment. This requirement has its origins in regulations of the Interstate Commerce Commission issued in 1921. Its wording was most recently revised in a final rule published on September 21, 1995, under RSPA's Docket Nos. HM-175A and 201 (60 Fed. Reg. 49098).

As the language of § 173.31(d)(1)(vi) states, the purpose of this type of inspection is to check "for corrosion or damage that may alter the intended operation of the device." For that reason, in response to a comment submitted in a separate rulemaking proceeding under Docket No. HM-216 (61 Fed. Reg. 28666, 28671; June 5, 1996), we stated in the preamble that RSPA and FRA believe in order to fully inspect a rupture disc (both top and bottom), the disc must be removed from the safety vent device. It has been FRA's experience that a rupture disc may appear normal on the top side, but be severely damaged or corroded on the bottom side.

You and others have raised concerns about the language of the present rule and its application to persons that forward a loaded tank car received from another location or return a tank car with residue. We anticipate initiating a rulemaking in the near future to address these concerns.

Sincerely,

*for Thomas G. Allan*  
Edward T. Mazzullo

Director, Office of Hazardous  
Materials Standards



990066

1-173.31

**Degussa-Hüls Corporation**

2 Turner Place, Piscataway, NJ 08855-0365  
732-560-6600

Degussa-Hüls  
Corporation

April 24, 2000

Mr. Edward T. Mazzullo,  
Standards, DHM-10  
U.S. Department of Transportation  
400 7<sup>th</sup> St. S.W.  
Washington, D.C. 20590-0001

RE: Interpretation – Rupture Disc Inspection

Dear Mr. Mazzullo,

Please see attached copy of our letter addressed to you dated March 10, 1999. I called in May in order to follow up and it was sent again on May 25, 1999. We have received neither an acknowledgement nor a response.

We have now performed a more in depth review of the matter and would like to emphasize that the current wording in 173.31 (d) (vi) was established in HM 175A and 201, which applied to tank car external visual inspections. It requires inspection of the pressure relief device, including the careful inspection of the frangible disc for corrosion or damage. HM 175A and 201 appeared in the federal register on Thursday, September 21, 1995. In the preamble it is stated that it is intended to relax the requirements, to clarify the purpose of the regulation, to make the regulation more realistic and to eliminate from the regulation items which were very difficult or expensive to inspect such as a full inspection of the safety relief valves or excess flow valves. It goes on to say that the regulation previous to this change would impose a duty on the shipper to disassemble and inspect safety valves and excess flow valves prior to each trip. It goes on to say "this final rule does not enlarge the "to the extent practicable" standard".

In the preamble to a subsequent final rule, HM-216, there was an interpretation which completely reversed the above and allowed absolutely no opportunity for comment. HM – 216 was completely unrelated to 173.31 (d) (vi) and did not make any changes to that section. It was not a place to give notice to the public of an interpretation which completely contradicted the intent of the current wording of that section as evidenced by the statements in the preamble to HM-175 and 201.

Furthermore, the interpretation does not take all factors into consideration. As an example, if a material will not corrode the rupture disc, this complete removal of the rupture disc to inspect the bottom is not necessary on each and every shipment both filled and also containing only residue. It seems to me that something like this needs to be proposed. This is a tremendous waste of time and money. Also, I am not sure that this interpretation was carefully thought out. It is too general. Such an inspection in the field

Page 2

could be dangerous. It could be that these inspections would be performed by persons who are not qualified to perform them.

We were told by CMA that it is intended that there will be a proposal which will address this issue. A transfer facility we use is telling us that FRA is still checking their records and still intends to enforce the interpretation. This is costing us up to \$300 on each car being returned to us and it has been costing us that for over a year now. This has added up to a substantial amount of money as well as a substantial amount of time being wasted in our case.

Can you advise us how we can get some assurance that enforcement of this, in our case, needless requirement will be postponed pending the outcome of a proposal or can we obtain another interpretation from your office considering the above. We are beginning to think that this could go on indefinitely. Please advise.

Sincerely,



John Foglio  
Manager, Hazardous Materials  
Transportation Safety

**Degussa**   
Degussa  
Corporation

To: *Jennifer Karim*

99-0066

*The last time we spoke on 4/20 you said you were going to discuss this with Jim Rader or someone else at FRA. Do you have anything yet?*

**Mr Edward T. Mazzullo, DHM-10  
U.S. Department of Transportation  
400 7<sup>th</sup> St., S.W.  
Washington, D.C. 20590-0001**

*John Foglio*

March 10, 1999

Re: Interpretation - Rupture disc inspection

Dear Mr. Mazzullo:

We recently received word from a transfer facility we utilize that they are no longer able to return cars with residue to us as in the past. They told us that FRA said that cars may not be returned unless the rupture disc is removed and inspected, both top and bottom, on each shipment for cars loaded and those containing only residue. The transfer facility told us they are not in a position to perform that service and that arrangements would have to be made with a tank repair or emergency response company. Along with their letter to us they forwarded internal communication from FRA which establishes their position, attached.

After investigating, it was determined that the position of the FRA is that section 173.31(d)(1)(vii) which has to do with an EXTERNAL visual inspection, requires that the rupture disc be removed from the safety vent device and carefully inspected, both top and bottom, before each shipment on cars, both loaded and those containing only residue. The position comes from what seems to be an interpretation which appears in the preamble of HM-216, a final rule which is unrelated to and made no changes to the section above. It seems to us that this is not the proper method of communicating significant changes to the requirements without offering opportunity for comments. It is our opinion that a preamble to a final rule is a method for DOT to explain the reasoning behind decisions made in the same rule and not to offer interpretations to previously published rules/sections.

The preamble to HM 175A and 201, which established the wording in the section being interpreted reads "New paragraph (d) reinforces the inspection requirements that must be fulfilled before a tank car of hazardous materials is offered for transportation". It makes no mention of removing the rupture disc and inspecting both top and bottom. If it did the subject would have been addressed at that time. It is very difficult to understand the requirements if the Department interprets sections in preambles to final rules that make no changes to those sections.

This is a significant change and a subject for rule-making because a lot of money will be wasted based on a interpretation without giving thought to the financial implications or the possible adverse safety related consequences of performing such an activity in the field by people who may not be familiar with or inclined to do such an inspection. We know that it is a waste of time and money to remove and inspect the rupture disc on each and every shipment both full and residue. We would have communicated that if we had the opportunity to comment but we were not offered the opportunity as the requirement/interpretation appeared in a final rule, which was unrelated in the sense that it did not change the section which was being interpreted.



Degussa  
Corporation

September 10, 1994

Page 2 Mr. Mazzullo

Currently all our facilities perform an external check of the rupture disc prior to releasing the car (loaded and empty). If all our transfer facilities were to make the same decision as the one mentioned above, we would face charges of at least \$800,000 per year for inspection by outside companies, which is a conservative estimate. Having to remove and check the disc as many times as would be required can lead to potentially incorrect installation, premature weakening of the disc and worn out disc assembly parts. Extra handling alone could lead to two replacements each car per year or about \$40,000 in disc costs alone. Keep in mind there is no safety benefit. It has been our experience that the majority of the materials we ship are not corrosive to the stainless steel rupture discs we are using.

We are hoping to get some sort of interpretation of the section in question which will cause us not to waste a lot of money for absolutely nothing. Please advise. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Foglio".

John Foglio  
Manager, Hazardous Materials  
Transportation Safety

• Page 2