



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

APR - 1 2004

Mr. Richard J. Lloyd  
Manager, Regulatory Compliance  
Air Products and Chemicals, Inc.  
7201 Hamilton Boulevard  
Allentown, Pennsylvania 18195

*Ref No. 04-0009*

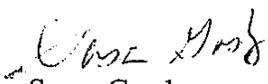
Dear Mr. Lloyd:

This responds to your request for clarification of an amendment to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) adopted under Docket HM-223 (final rule published October 30, 2003; 68 FR 61905). Your question concerns the applicability of revised § 174.67 to tank car unloading and transloading operations. Please accept my apology for the delay in responding.

Your understanding is correct. The entire § 174.67, as revised in the HM-223 final rule, applies to transloading operations. Effective October 1, 2004, rail tank car unloading operations performed by consignees after delivery of the rail car are not subject to regulation under the HMR. We plan to issue a correction document later this year to clarify the applicability of § 174.67.

I hope this information is helpful. Please let me know if you have additional questions.

Sincerely,

  
Susan Gorsky  
Senior Regulations Specialist  
Office of Hazardous Materials Standards



040009

*§174.67*



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16 January 2004

Ms. Susan Gorsky  
U. S. Department of Transportation  
Research and Special Programs Administration  
Office of Hazardous Materials Standards DHM-10  
400 Seventh Street, S. W.  
Washington, D. C. 20590

Re: Docket No. RSPA-98-4952 (HM-223)

Dear Ms. Gorsky:

I will appreciate your confirmation of an interpretation I received on Section 174.67 of 49 CFR from a Help Line representative during my 14 January telephone call. It is my understanding that the entire Section 174.67 including paragraphs (a) through (n) applies to tank car unloading for transloading operations. And, Section 174.67 does not apply to unloading of a tank car by a consignee within its facility, which is not subject to the Hazardous Materials Regulations (HMR). Your representative agreed with this conclusion.

My question concerning the application of Section 174.67 was asked because of the introductory language of this section in the HMR. Paragraph (a) of this section reads:

(a) For transloading operations, the following rules must be observed:

This introduction is followed by sub-paragraphs (1) to (5). By placing the words "For transloading operations, the following rules must be observed:" after (a), it infers that only sub-paragraphs (1) to (5) apply to transloading operations while the remaining paragraphs (b) through (n) remain tank car unloading functions still regulated by the HMR. Therefore, the unloading of a tank car by a consignee within its facility would be subject to the attendance requirements of paragraph (i).

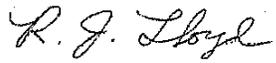
We do not believe this was the intent of the HM-223 final rule since the 30 October 2003 Federal Register page 61936 states (left column) "...the unloading of a tank car by a consignee within its facility is not subject to the HMR".

This confusion could be corrected by amending Section 174.67 to read:

174.67 Tank Car Unloading  
For transloading operations, the following rules must be observed:  
(a) .....  
(b) .....  
\* \* \* \* \*  
(n)

Therefore, please advise us that the unloading of a tank car by a consignee within its facility is not subject to the HMR including the attendance requirements of paragraph (i) in Section 174.67. Thank you for the clarification.

Sincerely,

A handwritten signature in cursive script that reads "R. J. Lloyd".

Richard J. Lloyd  
Manager Regulatory Compliance