



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

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

MAY - 8 2006

Mr. David Hiromura  
NRS Logistics, Inc.  
10 Bank St. Suite 1110  
White Plains, NY 10606

Ref. No. 06-0043

Dear Mr. Hiromura,

This is in response to your letter dated February 16, 2006, and subsequent telephone conversation with a member of my staff requesting clarification of the terms "hazmat employer" and "offeror" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You describe a scenario in which hazardous materials are delivered to your facility in a portable tank. Upon delivery, the driver disconnects from the trailer chassis, leaving the portable tank to be unloaded by your employees. The carrier then returns to pick up the portable tank for return shipment to its original offeror. Your questions are paraphrased and answered below.

- Q1. Are you an offeror for purposes of the HMR when your employees contact a carrier to pick up a portable tank containing the residue of a hazardous material?
- A1. As provided in § 171.8, an "offeror" is any person who: (1) performs, or is responsible for performing, any pre-transportation function required under the HMR for transportation of a hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. Pre-transportation functions are functions specified in the HMR that are required to assure the safe transportation of a hazardous material in commerce, including, but not limited to: (1) determining the hazard class of a material; (2) selecting a packaging; (3) filling a packaging; (4) securing the closures on a filled or partially filled packaging; (5) marking and labeling a package; (6) preparing a shipping paper; (7) providing and maintaining emergency response information; and (8) certifying that a hazardous material is in proper condition for transportation in conformance with HMR requirements. If your employees perform any pre-transportation functions to prepare the portable tank containing the residue of a hazardous material for transportation in commerce, then you are an offeror for purposes of the HMR.

Note that if you contract with the carrier to perform all pre-transportation functions related to the residue shipment, including securing the closures on the portable tank, preparing the shipping paper, providing emergency response information, and certifying the shipment is in proper condition for transportation in conformance



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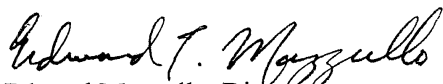
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with HMR requirements, then you are not considered an offeror for purposes of the HMR.

- Q2. Would your company be responsible for: (1) providing hazardous materials training to your employees; (2) implementing a security plan; and (3) registering with the Department of Transportation as a person who offers or transports hazardous materials?
- A2. Generally, empty packagings containing a residue of a hazardous material must be transported in the same manner as when they previously held a greater quantity of the material. If your employees perform any pre-transportation functions to prepare the residue shipment for transportation in commerce, then those employees must be trained in accordance with requirements in Subpart H of Part 172 of the HMR. Further, persons who offer for transportation or transport certain hazardous materials in commerce are required to register with PHMSA in accordance with 49 CFR Part 107, Subpart G and to develop and implement a security plan in accordance with Subpart I of Part 172. See the discussion under A1 above.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,



Edward Mazzullo, Director  
Office of Hazardous Materials Standards

**Drakeford, Carolyn <PHMSA>**

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**From:** Gorsky, Susan <PHMSA>  
**Sent:** Friday, February 17, 2006 10:54 AM  
**To:** Drakeford, Carolyn <PHMSA>  
**Subject:** FW: Training et al

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Carolyn,

Let's make this a request for interpretation and prepare a written response. Thanks.

Susan

-----Original Message-----

**From:** dhiromura@nrs-logistics-usa.com [mailto:dhiromura@nrs-logistics-usa.com]  
**Sent:** Thursday, February 16, 2006 5:21 PM  
**To:** Gorsky, Susan <PHMSA>  
**Subject:** Training et al

Susan,

Sorry I pushed the send button too soon. Great to see you at DGAC. The group always appreciates your insights.

Just to follow up on our conversation, we have a customer who produces a non hazardous product at their plant in the US. They receive a hazardous raw material in a UN portable tank. Normally, the driver waits and after unloading is completed, takes the empty tank away. Occasionally, unloading is delayed and so the driver unhooks and leaves without the tank and chassis. When the unloading is completed, plant personnel call the driver to return and pick up the empty tank.

In regards to the actions involved in getting the empty tank picked up and taken back to the carrier, does it make them a haz mat employer and thus have to register with DOT, train, have a security plan, etc.

Thanks for your input on this. I'll be over at PHMSA during the morning of 2/17, so I may get to say hello to you again!

Thanks and best regards,  
David

David Hiromura  
NRS Logistics Inc.  
914-422-3400