Transportation/Hazardous Materials: Pipeline and Hazardous Materials Safety Administration Interpretative Letter Addressing "Hazmat Employer"

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The United States Pipeline and Hazardous Materials Safety Administration ("PHMSA") addressed in a February 19th interpretative response a question regarding the Hazardous Materials Regulations ("HMR") applicable to the definition of "hazmat employer." See Reference No. 20-0055.

PHMSA was responding to a request from the Port of Portland, Oregon ("Port").

The Port indicated that the question of whether it constituted a "hazmat employer" had been a subject of discussion between it, the State of Oregon and federal agencies. Specifically, the issue concerned the Port's responsibility for training and recordkeeping of personnel that loaded and unloaded hazardous materials cargo. As a result, the Port asked PHMSA who is the "hazmat employer" responsible for training and recordkeeping for those who load and unload hazmat cargo.

The Port informed PHMSA that it:

. . . contracts with third parties for maintenance of the cranes, cargo handling equipment, and the provision of loading and unloading services at Terminal 6 of the Port facility. Vessel and rail carriers may also contract with the Port and arrange for these third parties to provide cargo handling services. In such cases, the third parties act on behalf of the carriers to perform functions that are subject to the HMR.

An alternative outlined by the Port was a scenario in which vessel and rail carriers can work (contract) directly with third parties providing cargo handling services, contract with a different third party of their choosing, enter a collective bargaining agreement with a labor union representing dock workers, and/or employ labor directly for cargo handling services. No Port employees are stated to be engaged in the loading or unloading of hazmat cargoes, packing hazmat in containers, preparing labels or shipping papers or any other pre-transportation functions described under the HMR. Further, the Port indicated it does not engage in the direct selection, hiring, supervising, or directing of personnel handling hazmat.

PHMSA in its February 19th letter notes that the HMR provides that any person who performs a hazmat function is subject to these rules and responsible for complying with the requirements of the HMR applicable to performance of that function. It concludes that based on the Port's submission:

. . . third parties providing hazmat cargo handling services are responsible for complying with the training and recordkeeping requirements of § 172.704 as "hazmat employers."

However, PHMSA does note that the Port could be held responsible for non-compliance with the HMR at its facilities as a holder of the general permit under 33 CFR § 126.27. Such liability is stated to be determined on a case-by-case basis, depending on the facts of the situation.

A copy of the interpretative response can be downloaded here.