



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Transportation/Hazardous Materials: U.S. Pipeline and Hazardous Materials Safety Administration Addresses Whether Purchaser of Crude Oil is an "Offeror"

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The United States Pipeline and Hazardous Materials Safety Administration ("PHMSA") addressed in a March 15th letter a request for clarification of Hazardous Materials Regulations ("HMR") applicable to the definition of "offeror" of hazardous materials and the registration requirement under § 107.601.

PHMSA was responding to a December 13, 2016 letter from Enoch Keever PLLC ("Enoch") which was posing the question on behalf of a client.

Enoch stated that the client was a producer of crude oil that sells to a purchaser. PHMSA noted its understanding that:

...under contract, ownership of the oil passes to the purchaser as it flows through the valve on your client's storage tank. It is your understanding that the purchaser is the "offeror" based on performance of a variety of functions, including certain hazardous material pre-transportation functions.

The question posed is whether the purchaser of the crude oil, or both, are considered an "offeror" of hazardous materials and consequently required to register under § 107.601.

PHMSA states that based on the information provided in the letter the purchaser is considered an offeror of hazardous materials and is required to register accordingly. However, the agency concludes Enoch's client is not an offeror as defined by the HMR and is not required to register under § 107.601. The rationale offered by PHMSA is:

As defined in § 171.8, a "person who offers" or "offeror" means any person who does either or both of the following:

1. performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce; or
2. tenders or makes the hazardous material available to a carrier for transportation in commerce.

Any person that is determining the hazard class of hazardous material, selecting a package, filling a package, securing a closure, or marking a package to indicate that it contains a hazardous material, etc., is also considered an "offeror" (see § 171.1(b)).

[A copy of the letter can be downloaded below.](#)