U.S. Department
of Transportation
Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave., S.E.
Washington, DC 20590

MAR 14 2008

Ms. Ella McNeil
Office of Environmental Management
U.S. Department of Energy
Forrestal Building, Room 5B-171
1000 Independence Avenue
Washington, DC 20585

Ref. No. 08-0023

Dear Ms. McNeil:

This is in response to your letter requesting clarification of the training requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they pertain to special permits. Your questions are paraphrased and answered as follows:

Q1. What are the minimum training requirements for hazardous materials employees performing functions set forth in a special permit? What is the meaning of the following statement that is included in a special permit:

> "Each hazmat employee, as defined in § 171.8, who performs a hazmat function subject to this special permit must receive training on the requirements and conditions of this special permit in addition to the training required by § 172.700 through § 172.704."

A1. Unless the HMR or special permit specifies otherwise, the training requirements in Subpart H of Part 172 (§ 172.700 through § 172.704) are the minimum training requirements for the terms and conditions of the special permit and for any other regulated functions performed by the hazardous materials employee with respect to that particular hazardous materials shipment.

As specified in § 172.704, hazmat employee training must include: (1) general awareness/familiarization training; (2) function-specific training; (3) safety training; (4) security awareness training; and (5) in-depth security training when a security plan is required. Note that function-specific training is only one of the training requirements that must be included in the training curriculum. Modal-specific requirements must also be addressed when applicable (see § 172.700).

The training statement that you cite from the special permit means that a hazardous materials employee must receive training that includes the terms and conditions of the special permit

and its application to shipments handled by the employee. This training is in addition to the training required in accordance with §§ 172.700 through 172.704.

Q2. May we employ a graded approach to the training material and method of training and testing based on the magnitude of hazard involved, relative importance to safety and security and complexity of functional requirements in the special permit?

A2. You may apply such a formula to your training program provided all of the training requirements in Subpart H of Part 172 are met (see A1 and A3).

Q3. Are any of the following methods individually acceptable to meet the HMR training requirements?

a. Reading the permit and signing a document stating this was done.
b. Attending a formal briefing where the requirements and conditions of the special permit are described.
c. Participating in hands-on situations where the requirements and conditions of the special permit are provided.
d. Attending structured classroom training.

A3. The methods, as outlined, are not acceptable. As discussed in A1 and A2, targeting only the special permit provisions is not acceptable because it omits the required training elements in Subpart H of Part 172. Hands-on training or classroom training would be acceptable methods provided the training curriculum included all required training as specified in Subpart H of Part 172 and provided the special permit training was sufficiently comprehensive to enable the hazmat employee to perform assigned hazmat duties.

With respect to meeting the training requirements specific to the special permit, simply reading or describing the provisions set forth in the special permit may not be sufficient in most cases to ensure the understanding of the hazmat employee, Moreover, familiarity with the provisions of the special permit will not ensure that the hazmat employ understands and can apply HMR requirements needed for the proper performance of most hazmat functions. For example, special permits often reference specific regulatory citations from the HMR. Simply reading or describing the special permit without also, covering the referenced citations would result in significant gaps in the training. Additionally, such training methods do not necessarily tie the provisions of the special permit into requirements of the HMR that are necessary to properly understand and perform certain hazmat functions.

The HMR's training requirements, while specific in the elements, are intentionally broad in the particulars. The regulations provide the necessary latitude for a hazmat employer to develop an effective training program and ensure a level of training that is adequate and appropriate for its hazmat employees. The person developing the training program (whether in-house or contracted) must have sufficient knowledge of the HMR to produce an effective curriculum. The Pipeline and Hazardous Materials Safety Administration (PHMSA), Office

of Hazardous Materials Initiatives and Training offers training materials designed to help hazmat employers comply with the training requirements. The materials may be ordered by contacting that office at 202/366-4900 or by accessing PHMSA's website at http://hazmat.dot.gov/.

Q4. Must the hazmat employer ensure that the hazmat employee is tested on the terms and provisions of the special permit? If so, must the test be in written form with a pass/fail scoring procedure or may it take the form of demonstrating knowledge, or a peer review upon performing the duties pertaining to the HMR?

A4. Yes, the hazmat employer must ensure that the hazmat employee is tested (see § 172.202(d)) on the terms and provisions of the special permit, as well as any other applicable HMR requirements, and the requirements in Subpart H, Part 172. With respect to the type of testing, any form of testing that ensures the employee is able to perform assigned hazmat duties is acceptable.

Q5. What is the minimum form of documentation required to show that a hazmat employee has received training and testing? Must recurrent training documentation be added to the current training files or may it be attached to the shipping file for the applicable shipment?

A5. The requirements for documentation are found in § 172.704(d)(1) through (d)(5). Training records must include: (1) the hazmat employee's name; (2) the most recent training completion date; (3) a description, copy, or location of the training materials used; (4) the name and address of the person providing the training; and (5) certification that the hazmat employee has been trained in accordance with HMR requirements.

With respect to the location of the training documents, the HMR requires that the documents be retained by the hazmat employer, but do not specify a location. However, the hazmat employer must be able to readily produce all of the required training documentation specified in § 172.704(d)(1) through (d)(5) upon request by enforcement personnel or other transportation personnel.

Q6. May a new hazmat employee perform the functions specified in a special permit while under the direct supervision of a trained hazmat employee provided "special permit training is administered" to the new employee within 90 days of employment or job function?

A6. As provided in § 172.704(c), a new employee may perform such functions prior to completion of training under the direct supervision of a trained hazmat employee.

Q7. Does the recurrent training requirement, which requires a hazmat employee to have training at least once every three years, apply to special permit provisions?

A7. Yes.

I hope this information is helpful. Please contact this office if you have additional questions.

Sincerely,

Hattie L. Mitchell, Chief
Regulatory Review and Reinvention
Office of Hazardous Materials Safety

Subpart H of Part 172

cc: Mr. Ashok Kapoor, DOE

Department of Energy
Washington, DC 20585

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McIntyre
§171.8
§172.700-704
Training
08-0023

Mr. Mr. Edward Mazzullo
Director of Hazmat Standards
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Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
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Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

We are requesting clarification of the following training requirement found in the "Compliance" section of each Special Permit issued by the Department of Transportation (DOT):

> *Each "Hazmat employee" as defined in 171.8, who performs a function subject to this special permit must receive training on the requirements and conditions of this special permit in addition to the training required by 172.700 through 172.704.*

We understand this required training is considered "function-specific" as cited in 49 CFR, 172.704(a)(2), and therefore subject to the requirements listed in 49 CFR, Part 172, Subpart H, Training. We also understand and acknowledge there have been many interpretations written by the Office of Hazardous Materials Safety (OHMS) stating the employer must determine the training needs of its Hazmat employees based upon the employer's requirements and each employee's specific job function. However, based upon various comments received during DOT compliance reviews within the DOE contractor complex, we are seeking clarification on what the minimum training requirement would be for Special Permits. Is a graded approach to the training material, method of training and testing based on the magnitude of hazard involved, relative importance to safety and security, and complexity of functional requirements in the Special Permit acceptable?

Therefore, we seek clarification in the following areas:

<u>Acceptable Training Method</u>
What constitutes the minimum requirement for Special Permit training? As stated above, it is OHMS opinion that *the employer must determine training needs of its hazmat employees based upon the employer's requirements and each employee's*

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specific job function. DOE contractors employ several methods, including the following:

1. Reading of the Special Permit, and signing a form that documents that action.
2. Attending a formal briefing, where the requirements and conditions are described.
3. Participating in hands on training where the requirements and conditions of the Special Permit are provided.
4. Attending structured classroom training.

Are these methods individually acceptable to meet the training requirements for a Special Permit?

Testing

Once training has been successfully and compliantly administered, must the hazardous material employer ensure the hazmat employee is tested by appropriate means on the training subjects of the Special Permit? If so, must this testing be a written test with a set pass/fail score, or can it take the form of a demonstration of knowledge or the completion of a peer review when the shipment is prepared for transport using the Special Permit?

Recordkeeping

Contingent upon the answers above, what is the minimum form of documentation required to acknowledge the required training/testing has been completed? Must the record of training be added to a record of current training in accordance with the requirements of 172.704(d), or can it be attached to the shipping file for the applicable shipment?

Initial Training

May a new hazmat employee, or one that has not been compliantly trained in the requirements of the Special Permit, perform the functions required in the Special Permit while under the direct supervision of a hazmat employee who has been properly trained of the requirements of the Special Permit (as long as Special permit training is administered to the new employee within 90 days of employment or change in job function)?

Recurrent Training

Must the additional training required by the Special Permit be received by the applicable hazmat employee at least once every 3 years if the Special Permit is utilized for more than that time frame?

Again, we ask these questions based upon comments received during the DOT compliance reviews with the wish to ensure that all hazardous materials

employees are compliantly and efficiently trained to complete their job functions throughout the complex.

If you need additional information, please contact me at (202) 586-8548, or Mr. Ashok Kapoor at (202) 586-8307, e-mail: ashok.kapoor@hq.doe.gov.

Sincerely,

Ella M. McNeil

Ella McNeil, Acting Director
Office of Packaging and Transportation
Office of Environnemental Management

cc: D. Chung, EM-60