National Transportation Safety Board

Washington, D.C. 20594

Office of the Chairman

SEP 14 2005

Ms. Stacey L. Gerard
Acting Assistant Administrator/Chief Safety Officer
Pipeline and Hazardous
Materials Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

SEP 19 2005

Dear Ms. Gerard:

Thank you for your April 19, 2005, response to the National Transportation Safety Board regarding Safety Recommendation R-04-10, stated below. This recommendation is derived from the Safety Board's investigation of a rupture of a railroad tank car containing hazardous waste in Freeport, Texas, on September 13, 2002.

R-04-10

> In cooperation with the Occupational Safety and Health Administration [OSHA] and the Environmental Protection Agency [EPA], develop regulations that require safe operating procedures to be established before hazardous materials are heated in a railroad tank car for unloading; at a minimum, the procedures should include the monitoring of internal tank pressure and cargo temperature.

Effective June 1, 2005, rail tank car unloading operations conducted after transportation in commerce is concluded are subject only to applicable OSHA and EPA regulations. Thus, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has, in effect, passed the Department of Transportation's oversight responsibilities to OSHA and, to a lesser degree, to the EPA. The Safety Board's position, as we stated in our October 29, 2001, letter to the docket on HM-223, is that this approach constitutes a retreat of the DOT from exercising its statutory oversight of loading and unloading operations. Our concern, expressed on several occasions during the rulemaking process related to HM-223, was that PHMSA had not evaluated whether either of these two agencies have the expertise and resources to effectively oversee these transportation-related operations. The Board specifically expressed concern about the lack of expertise that personnel in these agencies had in rail tank car design, cargo tank design, and the operational parameters associated with bulk container loading and unloading. The Research and Special Programs Administration (RSPA, the original recipient of this recommendation) stated in the past that it had extensive consultations with OSHA and the EPA, but never indicated specifics regarding details about the subjects discussed. The Board was not convinced that, if PHMSA relinquished its regulatory authority over hazardous materials loading/unloading operations, other Federal and State agencies would be able to effectively exercise the necessary safety oversight of these very specific

areas of transportation. Given the EPA's recent response to the Board's recommendation, we believe our concern is valid. In a letter to the Safety Board dated January 10, 2005, the EPA stated the following:

> One possible outcome from this recommendation would be to restore the HMR requirements on unloading of tank cars to their prior scope and effect. EPA believes that there may be merit to the recommendation that DOT continue to exercise jurisdiction over the unloading of railroad tank cars. In contrast, if EPA were to take regulatory action, EPA could only exercise jurisdiction over the unloading of hazardous wasters and not over the products or non-hazardous wastes which might exhibit the same properties and risks during their heating and unloading. Therefore, we would want to discuss with DOT the possibility of reinstating its previous policy on railroad tank car unloading or other possible approaches before EPA would consider undertaking a regulation that would only afford piecemeal protection.

Although PHMSA has indicated that it will work with OSHA and the EPA to develop an appropriate strategy for addressing the problem, it is unclear if OSHA or the EPA can require and enforce adequate safety requirements before hazardous materials are heated in a tank can. As the Board continues to believe there is a serious gap in the effective oversight of loading/unloading operations of railroad tank cars and that this safety issue has not been adequately addressed, Safety Recommendation R-04-10 is classified "Open—Unacceptable Response."

The Safety Board looks forward to receiving additional information from PHMSA to address our concerns. We emphasize that this safety issue needs to be resolved as quickly as possible.

Sincerely,

Mark V. Rosenker
Acting Chairman

cc: Ms. Linda Lawson, Director
Office of Safety, Energy, and Environment
Office of Transportation Policy