



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

FEB 07 2013

Mr. Timothy Wiseman
Attorney
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1500
Indianapolis, IN 46204

Ref. No. 12-0265

Dear Mr. Wiseman:

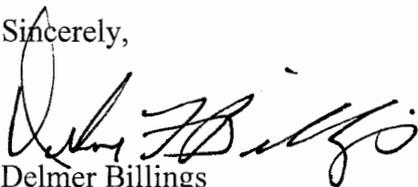
This responds to your December 3, 2012 letter requesting clarification of the record retention requirements for portable tanks under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You request clarification whether a similar exception from record retention requirements for an owner of a cargo tank under § 180.417(a)(3)(ii) exists for your (ICC/DOT 51) portable tanks. Specifically, you ask whether, in the absence of the manufacturer's certificate for the specification and the manufacturer's data report required by the American Society of Mechanical Engineers (ASME) Code, the owner may copy the information marked on the portable tank plate(s) and have a registered inspector certify the portable tank conforms to the specification; and then retain this documentation in a record.

No exception from the record retention requirements for an owner of a portable tank exists similar to the exception afforded a cargo tank owner under § 180.417(a)(3)(ii). The requirements for the qualification and maintenance of a portable tank, including an authorized ICC/DOT 51 portable tank, are found in Subpart G of Part 180 of the HMR. Record retention requirements are specified in § 180.605(l). No exception is written into these requirements allowing for reproduction of the stamp plate information and certification of conformance with the specification by a registered inspector in the absence of a manufacturer's data report and certification. The exception found in § 180.417(a)(3)(ii) was originally adopted under a final rule (HM-183, 183A) (54 FR 24982, 25032; June 12, 1989) incorporating regulations for the manufacture of a cargo tank, and its maintenance, operation, repair, and requalification and was specific to cargo tanks only.

Maintaining a written record of the qualification of a portable tank in a manner alternative to what is prescribed in the HMR may possibly be obtained through issuance of a special permit by the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration. The application process for a special permit and minimum criteria for justification of a level of safety at least equal to regulation or that is consistent with the public interest is outlined in 49 CFR Part 107, Subpart B.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Delmer Billings". The signature is written in a cursive style with a large initial "D" and "B".

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division

Der Kinderen
\$180.417
Cargo Tanks
12-0265

TIMOTHY W. WISEMAN
MANAGING PARTNER
twiseman@scopclitis.com

December 3, 2012

VIA U.S. MAIL

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Request for Official Interpretation

Dear Sir/Madam:

My firm represents Multistar Industries, Inc. d/b/a Multifrost, Inc. ("Multistar"), which is engaged in the business of transporting hazardous materials to and from its customers' locations throughout the Pacific Northwest. Specifically, Multistar transports ammonia anhydrous in tanks built to ICC/DOT-51, MC-330, and MC-331 specifications (the majority being ICC/DOT-51 tanks). Multistar does not have the manufacturer's data reports, certificates, or related papers for its fleet of ICC/DOT-51 tanks as required by 49 C.F.R. § 180.605(l). Although Multistar is aware of an exception to a similar record-retention policy for *cargo tanks* (see 49 C.F.R. § 180.417(a)(3)(ii)), it is unclear whether this exception also applies to Multistar's fleet of ICC/DOT-51 *portable tanks*. Accordingly, this letter requests clarification on that issue.

49 C.F.R. § 180.417(a)(3) provides

(3) DOT Specification *cargo tanks* manufactured before September 1, 1995--

...

(ii) ASME Code Stamped cargo tanks. If the owner does not have the manufacturer's certificate required by the specification and the manufacturer's data report required by the ASME, the owner may contact the National Board for a copy of the manufacturer's data report, if the cargo tank was registered with the National Board, or copy the information contained on the cargo tank's identification and ASME Code plates. Additionally, both the owner and the

Registered Inspector must certify that the cargo tank fully conforms to the specification. The owner must retain such documents, as specified in this section. (emphasis added).

Assuming its MC-330/331 tanks were manufactured before September 1, 1995, this provision would seemingly permit Multistar to simply copy and retain the information contained on the cargo tanks' identification and ASME Code plates and have a registered inspector certify that the tanks fully conform to the specifications. Indeed, following a recent FMCSA compliance review, Multistar received a written interpretation (enclosed as Exhibit A) from Mr. Jeffrey James, FMCSA Washington Division Administrator, confirming this understanding.

It is unclear, however, whether this exception—which by its own terms applies to DOT specification *cargo tanks*—applies equally to Multistar's ICC/DOT-51 *portable tanks*, such that Multistar need only retain a copy of the portable tanks' identification and ASME Code plates and have a registered inspector certify that the tanks fully conform to the specifications. Multistar, by counsel, recently posed this very question to PHMSA Investigator Terry Pollard, who opined that the exception *would* apply to Multistar's ICC/DOT-51 tanks (see E-mail exchange with Terry Pollard, enclosed as Exhibit B). Multistar has since verified that these particular tanks were never registered with the National Board. Accordingly, Multistar respectfully requests an official interpretation regarding whether the exception found at 49 C.F.R. § 180.417(a)(3)(ii) applies equally to its MC-330/331 *and* its ICC/DOT-51 tanks, assuming the tanks were manufactured prior to September 1, 1995.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,

Timothy W. Wiseman
*Attorney for Multistar Industries, Inc.
d/b/a Multifrost, Inc.*

TWW/bkw
Enclosures

cc: Peter Vanourek (via U.S. Mail)
Jedd Miloud (via E-mail)
Jerry Calderon (via E-mail)

Multistar Industries, Inc. (USDOT #461410)
Safety Management Plan – Third Supplement
November 29, 2012

Since the recent compliance review of our operations by the FMCSA, Multistar Industries, Inc. ("Multistar") continues to make operational changes to ensure compliance with the various regulations impacting our business as an interstate motor carrier of hazardous materials. In that regard, we respectfully request that this letter and its various attachments be reviewed by the FMCSA as a Third Supplement to the previously submitted Safety Management Plan materials provided to your office last month. In submitting this Third Supplement, we remain committed to working with the agency to ensure continued safe and compliant transportation operations.

1. Removal of MC-330 & MC-331 Tanks from Service. Multistar will remove all MC-330 and MC-331 tanks (other than its cargo tank motor vehicles ("CTMV")) from service involving the transportation of hazardous materials. Specifically, the following tanks will be removed from service in the transportation of ammonia solution, ammonia anhydrous, or any other hazardous material:

<u>MSI TANK NO.</u>	<u>TANK SPECIFICATION</u>
MSI 500-01	MC 331
MSI 500-02	MC 331
MSI 500-04	MC 331
MSI 500-07	MC 331
MSI 500-08	MC 331
MSI 500-25	MC 331
MSI 1000-20	MC 331
MSI 1500-02	MC 331
MSI 1500-03	MC 331
MSI 1000-19	MC 330

In addition, the other MC-330 and MC-331 tanks currently listed out-of-service ("OOS") as in the Tank Inventory previously provided by Multistar will continue to remain OOS. All of these tanks will be kept in the designated "hospital" where all other out-of-service ("OOS") tanks are kept. The tanks will be marked with a bright orange OOS tag, and all employees will be instructed to not use these tanks for any reason.

Multistar will keep all MC-330 and MC-331 tanks OOS until otherwise approved in writing by the FMCSA. In that regard, Multistar reserves the right to seek a Special Permit and/or Authorization from the PHMSA regarding whether such tanks can be legally used in the manner these tanks were previously used by Multistar. However, even if such a Special Permit and/or Authorization is received by Multistar, it agrees not to return these tanks to service without first obtaining written authorization from the FMCSA.

The only limited use of these tanks going forward will be their transportation as empty containers to customers and/or for disposal. However, in that rare event, Multistar will first ensure that the tanks are cleaned and purged, and that all labels are removed or covered up prior to and during transportation.

For the sake of clarity, Multistar will continue to use the following cargo tank motor vehicles, subject of course to compliance with all applicable FMCSR/HMR regulations:

CARGO TANK MOTOR VEHICLES

2400-01	MC 330
4040-04	MC 330
6500-03	MC 330
10600-01	MC 331

2. Inspection of ICC/DOT-51, Non-Specification and Nurse Tanks – Multistar agrees to remove all other tanks (other than its CTMVs), including its inventory of ICC/DOT-51, Non-Spec and Nurse Tanks from service until such tanks have been inspected by a certified third party cargo tank inspector. In that regard, Multistar intends to use C.H.S. Transportation (“CHS”) in Pasco, WA to conduct the HMR-required inspections for all of its tanks. The plan is to have CHS inspect approximately 10 tanks at a time. If the tanks pass the required leakage, visual and other required HMR tests for the specific type of tank at issue, then and only then will the tank be placed in service by Multistar.

In addition, Multistar will have CHS inspect any questionable welds on each tank to determine if the weld impacts the barrel or shell of the tank without the proper certification. If so, then the tank will be placed OOS. However, Multistar is of the belief that all of the welding it has done to any of the applicable tanks was done to the apparatus (e.g. the landing skids primarily) rather than to the barrel or shell of the tank itself. However, the landing skids themselves were welded onto the tank by the manufacturer itself, rather than by Multistar. Multistar will confirm that CHS and any other third party testing facility is properly certified with the FMCSA with a CT certification and registered inspectors.

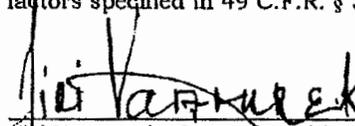
If desired by the FMCSA, Multistar will submit copies of all completed CHS tank inspections and pictures of the sides and each end of every tank to confirm that (1) the inspection was successfully completed and (2) the tanks are properly marked and labeled for transportation.

3. Tank Birth Certificate Issue. - Multistar does not have the manufacturer's data report, certificate or related papers for its fleet of ICC/DOT-51 tanks as required by 49 CFR 180.605(l). It has verified that these particular tanks were never registered with the National Board. However, Multistar, by its legal counsel, has reached out to PHMSA enforcement personnel (Terry Pollard specifically), who has initially indicated that Multistar could, in lieu of the actual manufacturer information, keep a copy of the specification plate on file similar to the exception currently allowed by PHMSA for MC-330 and MC-331 tanks. Multistar will be filing the attached Request for Official Interpretation with PHMSA in the next few days to clarify that the process allowed for MC-330/331 tanks will also suffice for ICC/DOT-51 tanks. Multistar will share both the Request and the PHMSA's response to the FMCSA.

4. Non-Specification Tanks - Multistar intends to submit an affidavit with any supporting documents from Jiri Vanourek along with any available supporting documents to demonstrate that its fleet of non-specification tanks meets the requirements of Note 17 of 49 C.F.R. 173.315. In addition, before any of these tanks are used, they will first undergo testing by CHS as required by Note 17 (see Section 2 above).

CERTIFICATION STATEMENT

Multistar Industries, Inc. continues to affirm that it will operate in compliance with the Federal Motor Carrier Safety Regulations and the hazardous material regulations, and that our operations currently meet the safety standards and factors specified in 49 C.F.R. § 385.5.


Jiri Vanourek, Owner/President/CEO


Pete Vanourek, Vice-President/COO