



National Transportation Safety Board

Washington, D.C. 20594

OCT 27 2009

Office of the Chairman

Ms. Cynthia Douglass
Acting Deputy Administrator
Pipeline and Hazardous Materials
Safety Administration
400 Seventh Street, SW
Washington, DC 20590

Dear Ms. Douglass:

Thank you for your January 15, 2009, response signed by Mr. Rick Kowalewski, former Acting Assistant Administrator/Chief Safety Officer, to the National Transportation Safety Board (NTSB) regarding Safety Recommendations I-02-1 and -2, and R-04-10, stated below. I also appreciate the time you took on August 26, 2009, to meet personally with NTSB office directors and staff to discuss these recommendations and for your followup e-mail, also dated August 26, 2009. Safety Recommendations I-02-1 and -2 were issued to the Pipeline and Hazardous Materials Safety Administration (PHMSA) as a result of the NTSB investigation of an accident involving the release of hazardous materials from a railroad tank car and subsequent fire at Riverside, Michigan, on July 14, 2001. Safety Recommendation R-04-10 was issued to PHMSA as a result of the railroad tank car rupture involving hazardous waste near Freeport, Texas, on September 13, 2002.

I-02-1

Develop, with the assistance of the Environmental Protection Agency [EPA] and Occupational Safety and Health Administration [OSHA], safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.

I-02-2

Implement, after the adoption of safety requirements developed in response to Safety Recommendation I-02-1, an oversight program to ensure compliance with these requirements.

R-04-10

In cooperation with the Occupational Safety and Health Administration and the Environmental Protection Agency, 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.

The NTSB notes that, on February 8, 2007, PHMSA issued *A Summary Evaluation of Risk Associated with Bulk Loading/Unloading of Hazmat*, a risk assessment of bulk loading and unloading operations for highway and rail transportation. The report provides both qualitative and quantitative analyses of incident reports involving loading and unloading of bulk packagings submitted to PHMSA in accordance with the reporting criteria specified in 49 *Code of Federal Regulations*, Section 171.16, Parts 171-180 (the Hazardous Materials Regulations). PHMSA determined that during calendar years 2004 through 2006, bulk loading and unloading operations accounted for 27 percent of all serious incidents, and bulk shipments of hazardous materials by rail or highway were involved in 9 out of 10 high-consequence events.

On January 4, 2008, PHMSA published a notice in the *Federal Register* soliciting comments on the proposed recommended practices for bulk loading and unloading of hazardous materials in transportation. Most commenters, including the NTSB, supported adopting the proposed recommended practices into the Hazardous Materials Regulations as the best way to enhance the safety of such operations. The NTSB was concerned that unless the proposed practices were required, implementation might not be uniform throughout the industry.

In the January 15, 2009, letter, PHMSA notified the NTSB that it had concluded that rulemaking action to address these safety issues is appropriate. At the August 26 meeting, you advised NTSB staff that an advanced notice of proposed rulemaking should be issued shortly, with a notice of proposed rulemaking (NPRM) to be published in mid-2010. The NTSB is pleased with PHMSA's decision; however, the NTSB points out that two of these safety recommendations are already 7 years old, and it will likely be several more years before a final rule is issued. Therefore, pending our receipt and review of a proposed rule that meets the intent of the recommendation, Safety Recommendations I-02-1 and -2, and R-04-10 remain classified "Open—Unacceptable Response." We are encouraged by PHMSA's current approach and look forward to reviewing the NPRM when it is issued.

Sincerely,



Deborah A.P. Hersman
Chairman

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