

January 27, 2011

As we have expected, the Pipeline Hazardous Materials Safety Administration (PHMSA) published a Notice of Proposed Rulemaking (NPRM) to ban wetlines on new and existing cargo tanks in today's *Federal Register* (attached.)

We are sending out a copy of the rule at this time and will do further analysis and reports in the future. We will work closely with other industry groups on this and already have invited several to join us. We will need active involvement from our carrier and associate members on this very serious proposal.

There is a relatively short 60-day comment period on the rulemaking. Comments are due on March 28, 2011. We will most likely request an extension of the comment period. This issue has been addressed in two previous rulemakings from PHMSA and was the focus of the Transportation and Infrastructure Committee of the House of Representatives in the last Congress. While we have defeated these ill-advised efforts in the past, we must fight this new effort with as much intensity as we can muster. We will work at the Agency level and also will try to involve friendly members of Congress on our behalf. We well may end up at the Courthouse before this is over. Please take all requests from NTTC for information and support on this issue very seriously.

Here are a few basic points, but I do encourage you to review the entire proposal.

1. The proposed rule would impact tank trailers transporting Class 3 flammable liquids (thus, this covers more than just gasoline products.) It would exempt most straight trucks. The rule does not address other trailers configurations such as Michigan tankers or truck and trailer combinations.) The rule would not cover a cargo tank motor vehicle (CTMV) transporting a flammable material that has been reclassified as a combustible.
2. Any trailer built TWO years after the effective date of the final rule would have to have a means of allowing no more than 0.26 gallons in a loading line or be constructed with accident damage protection similar to rear bumper requirements.
3. Existing trailers would have to be in compliance with the requirements TWELVE years after the effective date of the final rule.

HYPOTHITICAL EXAMPLE: If the effective date of the final rule were January 1, 2012, new trailers built on or after January 1, 2014 would have to be in compliance.

PHMSA essentially ignored the concerns NTTC has expressed about the potential threat to cargo tank shop workers performing retrofits on upwards of 27,000 tank trailers. Their reasoning is that there is a (one) product available that claims to not require welding. (This shows the ignorance of PHMSA regarding what might be required to retrofit a tank that would require some kind of "hot work.")

PHMSA totally dismisses the concept that the product could be drained from the loading lines at the rack. They do not address, but we certainly will remind them, that it would be possible to require a purging system at the loading site that could push the product into the tanker loading line into the tanker. PHMSA will argue that they do not have the authority to require this of a terminal.

PHMSA points out that enforcement should not be an issue since law enforcement personnel could be at a loading rack to observe removal of product from the lines OR by looking at sight glasses on roadside. (They appear to be under the impression that all cargo tanks hauling flammable materials have sight glasses on their lines.)

PHMSA states that the cost of installing a purging system would be \$2,585. They contend that there is no real additional cost for the trailer to being out of service since installation could be performed at the five-year periodic hydrostatic pressure test. We will especially need your input on this issue as PHMSA had to come up with something called "sensitivity analysis" to attempt to overcome the cost/benefit results that contributed to withdrawal of the previous rulemaking in 2006. This includes an assumption that "the possibility the average motor vehicle occupancy will increase as gasoline prices increase." (Seriously, they really say that in trying to make the facts fit the theory that the old facts disproved.)

Please read this proposed rule in full and send NTTC your comments and questions. Please let me know if you or someone on your staff can serve on a Task Force to assist NTTC staff in developing our comments to this rule. As I have mentioned regarding other issues such as the unfortunate new Hours of Service Proposal, "Elections make a difference."

John Conley  
jconley@tanktruck.org

Existing trailers would have to be brought into compliance by 2024.