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## THE CRACK DOWN ON PHMSA: What it means for YOU

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The Pipeline and Hazardous Materials Safety Administration (“PHMSA”) will be making some big changes to its special permits program and increasing its enforcement. In fact, it has already begun implementing some of these changes. If your company transports hazardous materials or offers them for transportation, you probably know why. Over the fall, a major shake up occurred at PHMSA following heavy criticism from the Department of Transportation’s (“DOT”) Office of the Inspector General (“OIG”) and the House Committee on Transportation and Infrastructure (“Committee”) about its special permits program and its enforcement policies.

So what can you do to prevent the crackdown on PHMSA from frustrating your business? First, understand the increased requirements for getting a special permit approved. Second, make sure that you are in compliance with the hazardous materials regulations (“HMR”) and any special permit or approval your company may hold.

Any company applying for a new special permit or the renewal of an existing one should be prepared for the process to take much longer than it has in the past. Make sure you apply for the special permit well in advance of needing it because correcting the three major problems that OIG and the Committee found with PHMSA’s special permits program will increase the processing time. The problems found were that PHMSA failed to: (1) consider the applicant’s safety history before granting a special permit; (2) evaluate the applicant’s argument that granting the special permit will not negatively impact hazardous materials transportation safety; and (3) coordinate with other transportation modal administrations.

There are ways for an applicant to ensure that the process moves forward as quickly as possible. First, be prepared to answer questions PHMSA has about your company’s safety record. If your company has had any safety incidents, such as an overturned truck or leaking package, or any enforcement actions against it, you will need to explain what went wrong and what corrective actions your company has taken to ensure it doesn’t happen again. Second, make the strongest possible safety argument in your application. Make sure to submit technical data, analyses, and/or tests demonstrating that the special permit will not have a negative impact on safety. If you are uncertain of what corrective actions to take or what technical information to provide, contact a legal professional with hazmat expertise. Finally, don’t give PHMSA a reason to reject your application. Make sure you are in full compliance with the HMR as well as the terms of any special permits your company may hold. Otherwise, PHMSA may find that your company is not fit to hold the requested special permit.



In addition, companies should note that PHMSA has announced an intention to review all existing special permits and cancel those that do not meet applicable standards. PHMSA may also cancel a number of special permits issued to trade associations because, as OIG stated, such special permits amount to a “blanket authorization” for the thousands of companies that belong to these associations. So far, PHMSA has only issued a policy statement indicating that the members and not the association were responsible for such compliance. However, if PHMSA does cancel them, affected trade association members will have to apply for a special permit individually under any new guidelines that PHMSA may issue.

All companies handling hazmats must prepare for PHMSA to increase its enforcement efforts. PHMSA will likely target special permit holders and companies with numerous safety incidents and enforcement actions, but all companies should take the necessary steps to ensure that they are in compliance with the HMR and any special permit or approval they may hold. PHMSA is serious about increased enforcement. Over the fall, the House introduced a bill that would require PHMSA to add eighty-four additional employees by 2012 with a focus on hiring personnel to add in inspection and enforcement efforts.

There are a number of ways to ensure your company is in compliance with the HMR and its special permits and approvals. First, contact a hazmat professional who can explain not only which rules apply to you, but how to comply with them. Second, many companies have begun bringing in a qualified hazmat professional to perform a mock compliance audit. Think of this as a hazmat quality check. It can help your company find and correct unknown violations before PHMSA does and before a safety incident occurs. Finally, remember that training hazmat employees is a critical investment for any hazmat company. Not only can it help prevent a violation, PHMSA generally takes it as evidence of an attempt at compliance with the regulations. Moreover, a properly trained employee is less likely to violate the HMR, which will help prevent incidents, violations, and consequent enforcement actions. With maximum fines of \$50,000 per violation or \$100,000 per violation if it results in death, serious illness, severe injury, or destruction of property, companies cannot afford not to comply with the HMR.

The Wicks Group, PLLC provides legal and consulting services and has significant experience and expertise in hazardous materials laws, regulations, and policy. For more information on the potential changes to PHMSA's special permits program, how to apply for a special permit, and how to avoid or respond to an enforcement action, contact Glenn P. Wicks or Lindsay McGuire at (202) 457-7790. Safety Specialists, Inc. provides hazardous materials safety training and consulting services to hazmat companies. To learn more about mock compliance audits or to schedule an employee training session, contact Safety Specialists, Inc. at (704) 573-0955.

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