



Canada and the US are pushing forward a plan to cooperate more closely on regulation

Square dance

CONFERENCE REPORT History was in the making in the old city of Savannah last month as nearly 300 delegates assembled for the annual COSTHA forum. Rulemakers from across North America and Europe gave prior notice of the changes in store for industry

We may well be in the midst of a lengthy economic recession but it was far from apparent during last month's Annual Forum and Expo of the Council on the Safe Transportation of Hazardous Articles (COSTHA), which took place at the Hilton DeSoto Savannah, Georgia, from April 22 to 26. Almost 300 delegates made the trip to the south-east, a record number for this growing event.

So what was it that persuaded so many managers to let their hazardous materials specialists out of the office for a few days? Could it be the impending entry into force of some major changes to the regulations in 2013? Might it be the increasing complexity and extent of the rules governing the movement of lithium batteries? Maybe delegates were tempted by the promise of balmy spring weather – largely unfulfilled, sadly. Or perhaps there is now a growing momentum behind the community that is developing around this event.

The conference itself takes up less than two days of the five-day programme. There

are also a number of round-table sessions and meetings of special interest groups, including the North American Automotive HazMat Action Committee (NAAHAC), the International Vessel Operators Dangerous Goods Association (IVODGA) and less formal groups of air carriers, life sciences specialists and those who will be most affected by the arrival of the globally harmonised system of classification and labelling of chemicals (GHS). The Dangerous Goods Trainers Association (DGTA) also took advantage of having several members in attendance to bring them up to date on some important developments.

There are training sessions too, which this year covered lithium and nickel metal hydride (NiMH) batteries, GHS, ADR, packaging selection and limited quantities. And, as always, the organisers had put together a programme rich in opportunities for delegates to get together over a cocktail or beer and some hearty southern food, kicking off with a rum-fuelled pirate evening at a nearby bar. The growing list of exhibitors reported themselves

pleased with the turnout and the number of chances provided to explain their products and services to those in attendance. And the hotel bar was the place to be, starting on Saturday evening, even though the conference did not start until Tuesday. It is something of a feature of the COSTHA meeting that discussions around the bar, even after midnight, largely feature arcane arguments about the hazardous materials regulations.

Welcome one and all

The conference proper was opened by COSTHA president **Bob Heinrich**, transportation safety advisor for Novartis Pharmaceuticals, with his Tibetan singing bowl. He noted that of the 291 attendees, 84 were first-timers. It is to COSTHA's credit that not only can it attract this many new faces in the current economic situation but also that they are welcomed into the fold as if they were long-standing members of the Council. In fact, Bob said, attendance had exceeded expectations to such an extent that the Hilton DeSoto was full and those booking late had

been put up at the DoubleTree, several blocks away (but closer to the riverfront and its attractions).

But Savannah has more going on than history and squares. **Griff Lynch**, COO of Georgia Ports Authority, explained that it is the fourth largest container port in the US, with the Savannah River offering deepwater access to the Garden City Terminal, the largest single container facility in the country. Throughput has been growing at more than 10 per cent per year over the last decade, currently standing at some 3.0m teu. Current capacity is around 5.0m teu and there are plans to expand this to 6.5m teu.

The port authority is about to embark on a major project to deepen the channel and widen the bends on the river to allow larger ships to call. Savannah can already handle container ships of up to 9,200 teu capacity but it is looking at the new breed of 12,000-teu and larger ships.

Around 40 liner services call at Savannah. Griff said that 18 per cent of the containers passing through Savannah travel by rail, although your editor can vouch for the fact that there are plenty of trucks on I-16 heading to and from Atlanta, the region's major population centre.

Last year Savannah handled a total of some 31,000 hazardous materials containers, Griff said, of which about 60 per cent were for export.

No US conference is complete without a motivational speaker, a feature that is not common in Europe. Their value is variable but **Steven E Childs** of VitalSmarts gave the COSTHA audience some very worthwhile tips on handling difficult conversations in the workplace. His advice was particularly useful to the hazardous materials professionals in attendance, who often struggle to explain to management and colleagues what it is they do and how vital their work is to the organisation as a whole.

The business of regulation

The conference got down to serious business with a joint presentation on GHS by **Don Bossow**, senior manager of North American regulatory affairs for Diversey Inc, and **Barbara Foster**, senior regulatory specialist at ICC The Compliance Center. Between them they did an excellent job of explaining in fairly simple terms and in just half an hour the roots of GHS and the progress that has been made recently – particularly in the US where the Occupational Safety and Health Administration (OSHA) has recently promulgated its final rule to apply GHS via HazComm 2012 (**HCB** April 2012, page 12).

Barbara alerted the audience to the unwelcome fact that, while GHS is aimed at occupational safety and health, it has already had and will continue to have an impact on the transport regulations and on compliance in general. It covers three basic elements, she said: classification, labels (for workplace safety) and safety data sheets (SDSs). It covers health hazards, physical hazards (as with the transport regulations) and environmental hazards; the US has also included some 'not otherwise classified' hazards, including such aspects as dust explosion, a topic that the UN Sub-committee of Experts of GHS currently has listed on its work programme.

Classification is the root of GHS. It drives the label, determining the symbol or symbols that must be displayed and the 'signal' word(s) and hazard statement(s).

GHS is now rolling out around the world, Don said, although with varying deadlines and schedules for substances and mixtures. HazComm 2012 was published on March 26 and will become effective on May 26. Implementation will take place over three years for both substances and mixtures. The US version is based on the third revised edition of the GHS.

This is the first major revision of HazComm, Don said. It will change it from a performance-

based system to a more prescriptive standard, with specific labelling and SDS requirements. This will require chemical manufacturers to re-evaluate all their products, rewrite SDSs and review training and the communication of hazards down the supply chain. Some products will inevitably fall under a more hazardous classification than hitherto. One important element of HazComm 2012 is that the exact percentage of each hazardous material in the mixture will have to be declared; it is possible that manufacturers can claim this as confidential business information but it seems likely that such a defence will not be generally accepted by OSHA.

While the US is progressing with GHS implementation, it is behind the EU and a number of other states – although New Zealand, which was first to get it on the statute books, is still dealing with the first edition of GHS. On the other hand, Canada is still at least two-and-a-half years away from implementation. This may well prove problematic for US shippers, since the new labels and SDSs will not be acceptable as they conflict with Canada's existing Workplace Hazardous Materials Information System (WHMIS).

Another problem facing US manufacturers is that, while OSHA has produced the rule for workplace safety, the Consumer Protection Safety Commission (CPSC) has yet to finalise its companion regulation and is still consulting on the way forward. This could well mean that manufacturers will have to have separate products going into professional usage and those for consumers, at least until CPSC's rule is finalised.

Don also alerted the meeting to the fact that all employees subject to the provisions of HazComm 2012 will need to be trained by December 1, 2013.

Hand in hand

The centrepiece of the morning sessions was a panel consisting of some of the most senior



transport labelling in a nut shell



regulators in the North American hazmat/DG firmament. Those in the audience who are regularly frustrated by the variations between US and Canadian rules had some good news; ditto those who had been shocked by the way the US Department of Transportation (DOT) had turned on industry and on those within its own ranks it felt were "too cosy" with industry. Presumably, given the list of upcoming regulations that were revealed, those companies involved in providing assistance in regulatory compliance will also have been happy.

The session was started by **Marie-France Dagenais**, director general of the TDG Directorate at Transport Canada. She reported on an agreement signed between the US and Canada in February 2011 to set up a Regulatory Cooperation Council (RCC), whose remit is to make it easier for US and Canadian companies to do business on both sides of the border. RCC's oversight will include transport activities, including hazmat. In December 2011 RCC announced its Joint Action Plan (JAP), which included 29 specific initiatives.

Marie-France said that the US and Canada have a unique relationship, with a huge border and a massive volume of bilateral trade and highly integrated supply chains. There

are already a number of cooperative activities in the regulatory sector and RCC will seek to build on that.

More specific information was provided by **Joanne St-Onge**, director of regulatory affairs at the TDG Directorate. Some work plans have already been set down, she said, and the RCC is looking for deliverables in 18 months. The Memorandum of Cooperation Agreement sets down the system for collaboration with two high level meetings per year and a number of working groups. It will aim for reciprocity (rather than alignment of regulations) and look to achieve a 'North American approach' to international cooperation, to include the sharing of data to improve risk assessments. [More information on the initiative can be found at www.trade.gov/rcc.]

Also on the panel was **Shane Kelley**, international standards specialist at DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA), who reviewed three other stated deliverables. These include the mutual recognition of gas cylinders, where, he said, "we continue to see a need for reciprocity". That goes for aerosols too, he said. Another area being looked at is cargo tanks, where there has been some improvement in the recognition of 'TC' tanks in the US. Nevertheless, he said, there is a

need to go beyond specification into areas such as repairs and emergency discharge control requirements for tanks carrying liquefied compressed gases.

It will not be possible to establish direct recognition of US special permits or Canadian certificates of equivalent level of safety, Shane explained. These are many in number and cover a wide array of topics. But it should be possible to review the existing permits and see if there is a way to make life easier for users.

"We are focused on results," agreed Marie-France. This means making it easier for stakeholders to engage in cross-border business. The ultimate goal is for common standards rather than mutual recognition, but this is a long way off at the moment. "The most important element is how far the US and Canada can harmonise," said **Magdy El-Sibaie**, associate administrator for hazmat safety at PHMSA. "We don't want to add further regulation and costs." He appealed for the support and participation of industry in furthering this process, suggesting that PHMSA's enforced disengagement from industry is now at an end. **Charles Betts**, director of PHMSA's Office of Hazardous Materials Standards (OHMS) supported the call for industry to help PHMSA get its work done, without going quite so far as Magdy.



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Exhibitors were happy with the big turnout at COSTHA

He said the Administration still needs to keep in mind its closeness to industry but also the value of collaboration.

Ottawa marches on

Transport Canada's TDG Directorate is looking at how to do domestic things more efficiently too, explained Joanne St-Onge. The question asked of its activities is: "How can we make it better for our stakeholders?" Part of that is trying to avoid doing too many amendments at the same time, although it was evident that, after a slow few years, the pace of regulatory change is beginning to pick up in Ottawa.

Joanne reported on some current activities. Amendment 11 to the Transport of Dangerous Goods (TDG) Regulations was published in Part I of Canada Gazette on March 10, 2012 (HCB April 2012, page 16). This is the point at which formal consultation opens; the comment period has now closed. This amendment addresses a number of unintentional impacts of the major Amendment 6 a few years ago, and also makes changes to align with the terminology and requirements of the revised TDG Act. It includes new definitions for 'person' and 'organisation'; some relaxation will be provided for aerosols under 1.15, which will help reciprocity; there are revisions proposed to the filling limits in 5.5; and the recognition of placards according to the International Maritime Dangerous Goods (IMDG) Code for road transport. The TDG Directorate is currently evaluating the comments made and will be looking to finalise a text for publication in Canada Gazette Part II.

The next rulemaking is likely to be a major

undertaking addressing dangerous goods safety marks, which Joanne said could be in Canada Gazette Part I in June this year. This will include a definition for 'overpack' and specify under what circumstances overpacks should be labelled; there will be a new placarding scheme to harmonise with the US Hazardous Materials Regulations (HMR), including the 'DANGER' placard; and the new marine pollutant mark will be introduced to harmonise with international provisions. When pressed on this amendment later in proceedings, Marie-France announced that the new limited quantity marks will be included in the amendment; their absence from the current TDG Regulations is causing severe problems in cross-border trade, although Transport Canada has now begun issuing certificates of equivalent level of safety to allow their use.

Also coming soon is an amendment to a number of standards, which Joanne also hoped would be issued in June.

Transport Canada has also floated for informal comment a proposed amendment on the reporting requirements in Part 8 (see page 26); Joanne said this could be in Canada Gazette Part I in the third quarter of 2012. It will align the requirements of the TDG Regulations with the TDG Act and should make life easier for those in scope of the provisions.

The next major revision will be the amendment to bring the TDG Regulations up to date with the 17th revised edition of the UN model regulations. Transport Canada is planning to include a column in the Dangerous Goods List to show those entries that qualify as marine pollutants, Joanne said.

It will also include the major changes in the latest editions of the international provisions, including the concepts of excepted quantities and 'de minimis' quantities. Transport Canada is currently aiming to have this in Canada Gazette Part I in the third quarter of 2012.

Joanne alerted the audience to a number of regulatory activities by other agencies that might affect the TDG Regulations.

More in store

Charles Betts took the podium to report on current regulatory activities at PHMSA. The last three years have been very busy, he said, with some 30 separate rulemakings promulgated during the 2009-2011 period. "2012 will be busy again," he predicted.

He began his presentation, however, with one already in place: PHM-7. Readers may recognise this more readily as the 'Enhanced Enforcement Authority Rulemaking' or, more informally, the 'Package Opening Rule'. Charles said he did not like this name – even though it was used in PHMSA's own meetings – as he did not want to cause distress. The rulemaking took years to get out but eventually took effect in May 2011.

Other rulemakings do not have the luxury of time; HM-215L, which will bring HMR up to date with the international provisions due to enter into force on January 1, 2013, is currently with the Office of Management and Budgets (OMB) and PHMSA is looking for early publication in the form of a notice of proposed rulemaking (NPRM). The previous equivalent rule, HM-215K, appeared first as an advance NPRM but Charles said this step would not be necessary. He expressed the hope that OMB would designate the rulemaking 'non-significant', which will allow PHMSA to get it finalised in time to enter into force on January 1; however, if this is not the case it will be hard to get it all done by the end of the year and PHMSA may have to draw up a separate rulemaking to update references to the IMDG Code and the International Civil Aviation Organisation's (ICAO) Technical Instructions.

HM-215K is not yet done with, Charles noted. The final rule appeared on January 19, 2011 and a subsequent final rule with a number of clarifications and minor corrections was issued on December 30, 2011. PHMSA is still addressing some appeals and a notice with its responses was scheduled to appear in the Federal Register "very soon".

Two rulemakings last year addressed 'distracted driving' by truck drivers, in cooperation with the Federal Motor Carrier Safety Administration. HM-256, issued as a

final rule in February 2011, limited the use of electronic devices while driving and HM-256A was a more specific rulemaking that placed restrictions on the use of cellphones.

One important rulemaking in 2011 was HM-233B, which revised the procedures for applying for special permits and approvals. This was part of PHMSA's broader initiative to revise the process and look back at existing special permits. A number of those have now expired but PHMSA is being "very aggressive", looking to incorporate around 20 per cent of the 1,500 or so existing special permits into HMR.

Several current rulemaking initiatives evidently drew the opprobrium of the audience. HM-231A, published as a final rule on April 16 and taking effect on July 1, will align the packaging rules with those in the ICAO provisions. PHMSA is also seeking comments on harmonisation with ICAO as regards lithium batteries; a notice was published under docket HM-224F on April 11. Charles' mention of HM-254 actually drew a round of applause from the audience; this deals with air bag inflators, seat belt pretensioners and other similar items and was published as an NPRM on March 26. Should this rulemaking be completed, Transport Canada is panning to provide reciprocity via certificates of equivalent level of safety.

An ANPRM issued under HM-242 on February 5, 2010 asked for opinions on how to deal with combustible liquids, particularly as regards the relationship between HMR and the international provisions. Charles said that PHMSA received around 140 comments and OHMS has made suggestions as to how to move forward. An NPRM can be expected soon, he said.

Referring back to talk of RCC, Charles pointed delegates to a notice issued on March 26 under PHMSA 2012-0058, asking for comments and suggestions as to how the draft work plan can help improve the cross-border movement of dangerous goods.

Potentially next up will be HM-253, which will address the increasingly significant aspect of reverse logistics. OMB is currently looking at this rulemaking, Charles said. He finished his presentation with a plea for industry to submit any comments at the NPRM stage; PHMSA finds this feedback very valuable and it is clearly better to have input before the rulings are finalised. He also alerted delegates to the fact that OMB is looking very closely at the issue of materials incorporated in HMR by reference; industry needs to keep an eye on this, he warned, as it could be a game-changer.

A number of delegates pressed Charles and Magdy on letters of interpretation. PHMSA

has been cleaning up some older letters but industry seems to want to keep them available.

Bones of contention

A star-spangled panel session followed, with COSTHA technical consultant **Tom Ferguson** leading discussion of some ongoing issues. The first to be addressed was the problem of the lack of recognition of UN-specification gas cylinders in the US. What would it take for the US to change its attitude? Shane Kelley explained that the US does indeed recognise the UN specifications and includes them in the HMR. However, cylinders for domestic use must bear the 'US' mark. He acknowledged that some stakeholders are finding difficulties in shipping cylinders to Europe and importing cylinders from there and other parts of the world.

Jeff Hart, head of the Dangerous Goods Division at the UK Department for Transport (DfT) and chairman of the UN Sub-committee of Experts on the Transport of Dangerous Goods, reminded the audience that the adoption of design and inspection procedures for pressure receptacles in the UN model regulations had taken a long time. Now that they are agreed, the provisions have been adopted into ADR and so are in the domestic legislation of EU nations.

It is hard to understand the US position, Jeff said. UN cylinders are recognised, but need to be stamped 'US'. Yet the US accepts UN-specification intermediate bulk containers (IBCs) and portable tanks – why not gas cylinders? There is a suspicion in some areas that it is a trade protection issue.

While admitting that RID and ADR do not allow the transport of US cylinders within the EU, Jeff noted that a number of countries have signed up to a multilateral special agreement that allows their use. It is therefore galling that the US does not allow the import of UK cylinders. The refilling of cylinders had been a problem but this has now been tidied up by the Transportable Pressure Equipment Directive (TPED). The EU believes is now has safe, highly reliable pressure receptacles, using the UN specification and being safely refilled under the terms of TPED and showing the 'T' mark. Why are these not allowed for use in the US? The current position is, in technical terms, indefensible, Jeff said.

Discussions have now started on the problem of cylinder specifications on an international level. Joanne St-Onge said that changes to Canadian standards will recognise US standards, which is a step forward, but the reality is that it is an international issue. Magdy El-Sibaie echoed her words, but in

saying that "we are all working towards the same goal" he opened up the possibility that the US is now moving towards the international position – a major change in DOT's attitude on gas cylinders.

What can industry do to help? asked Tom Ferguson; should trade associations be pushing the agenda? Jeff agreed that regulators need input from European and North American industry to help examine each other's standards. "If industry can show, via a study, that the safety levels are equivalent, it will give regulators a level of comfort," he said. Once the US comes around to the UN position, it will help improve the take-up of the UN specifications, Jeff opined.

But whatever happens, it will take a long time to make a major impact. Gas cylinders can have a useful lifetime of 30 years or more and there will always be a need to find a way for existing cylinders to continue to be used. Magdy suggested that the slow pace of change was at least partly the fault of interest; commercial interests are committed to keeping existing cylinders in use. DOT cannot wait for a change of heart from manufacturers and PHMSA will be happy to take part in whatever group is convened, he said. "We need to get moving!"

Tom turned the talk to aerosols. Shane Kelley explained that there are not UN standards for aerosols; US and European manufacturers each have their own standards, which seem to work fine. He was doubtful of the benefit of working towards a common standard. **Ryan Pacquet**, director of PHMSA's Approvals and Permits Division, mentioned that whenever such differences exist, there is a need for special permits. As PHMSA is trying to reduce the number of special permits, it would be helpful to address the issue via a rulemaking. As it happens, a draft has already been prepared.

Jeff Hart said he feels the water bath test is very outdated and does not fit well with modern aerosol production methods. There are alternatives but the rules still insist that all aerosols are tested. RID and ADR offer some relief, allowing samples to be tested, but this requires the approval of the competent authority. The first such approval in the UK is currently being closely monitored to ensure it offers an equivalent level of safety. Tom said that industry already has alternative test methods available and COSTHA is currently drafting a petition.

*This report on COSTHA's 2012 Annual Forum will continue in next month's issue of the **Bulletin**, covering international regulatory developments, the regular modal briefing and the legal update.*