TESSENDERLO GROUP

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KERLEY

Bob Boston
UTC Rail Safety
P.O. Box 47250
Olympia, WA 98504 - 7250
Subject: Clearance Waiver Request

August 21, 2009

Thank you for responding to our inquiry into the required clearance height for structures and equipment for rail operations. Regarding our phone conversation, our current facility project for adding a rail tank car loading rack will require a clearance height waiver in order for us to proceed. This is due to the fact that the fall protection safety cage, when in its retracted/upright position, does not meet the minimum required height of 22 feet, 6 inches measured to a point directly above the center of the track.

The exact height of the cage, when it is in its retracted/upright position, is 19 feet, 1/8 inch above the center point of the track. This loading rack is a manufactured railcar loading/unloading rack designed and sold by SafeRack Loading Rack Technologies of Sumter, South Carolina (866-761-7225). It was designed specifically for our facility in an attempt to minimize the cost, while maximizing the safety of our employees. I have included a copy of the drawing provided to us from SafeRack of the loading rack on page two. I will also attach the drawing as a separate document for ease of review.

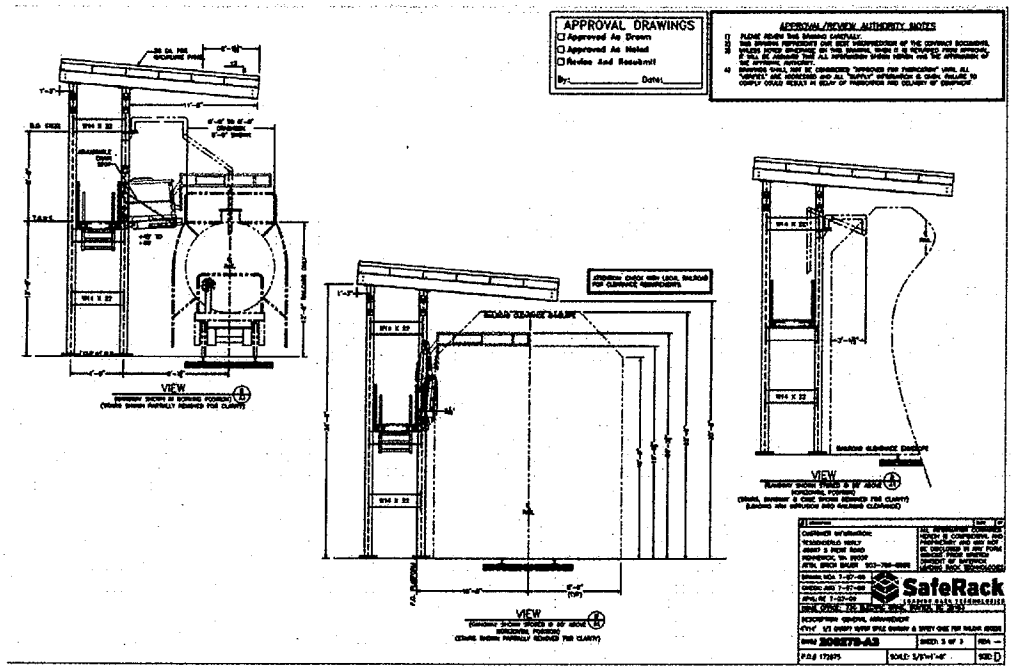
There are, as with any project, other options available to us, but due to budget constraints we are somewhat limited. We therefore request a waiver on the clearance height based on the following factors:

- We currently do not have a railcar loading station. This requires our employees to climb up and down the side of railcars utilizing the attached ladder. The addition of the rail loading rack will greatly improve the safety of our loading operations. Injuries related to falls while ascending or descending the railcar ladders will be greatly reduced.

- We have asked that additional features be included in the design of the loading rack to improve safety and working conditions even more. We have added:
  - A canopy to help protect employees from the elements and,
  - A fall protection safety cage that is automatically lowered down and onto the top of the railcar to provide better fall protection for our employees. As you probably know, the railing on the top of tank cars does not meet the criteria for fall protection. To protect employees working on the tops of these cars, SafeRack

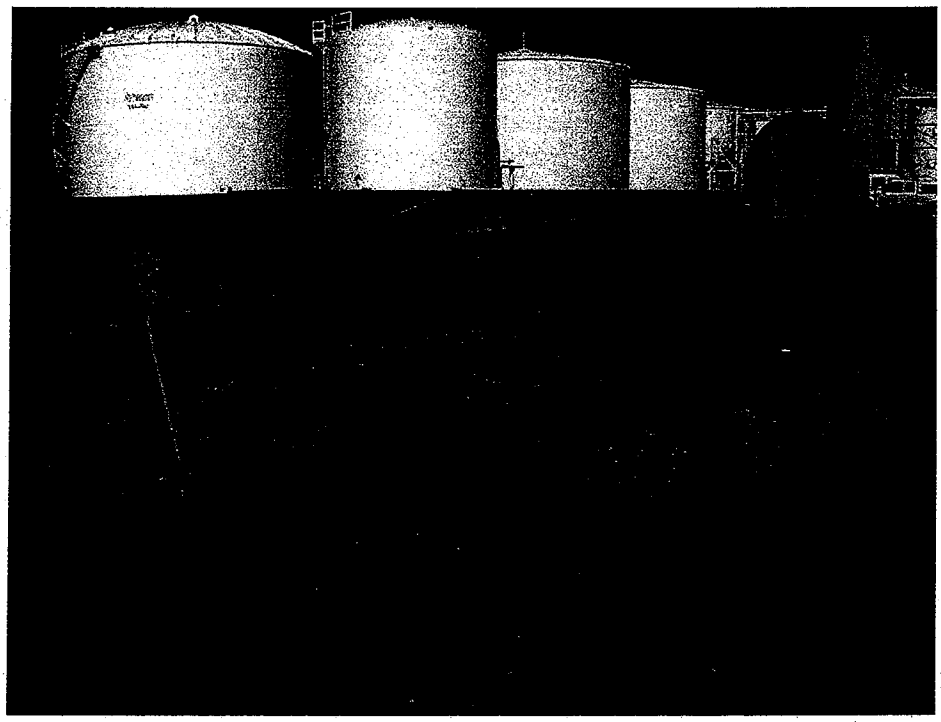
developed a safety cage that is lowered down and works in conjunction with the railing on the railcar to provide better fall protection for employees. The height of the safety cage is influenced by the height of the gangway that will be lowered and extended to the top of the rail tank car. The design of the rail loading rack allows the gangway, which employees will utilize to traverse from the rack to the railcar, to remain as level as possible. This will minimize the possibility of an employee slipping or tripping due to a slope created by the rail rack being lower or higher than the tank car.

SafeRack Railcar Loading Rack Drawing



Our current procedures for loading and unloading tanks cars include "blue-flagging" the track that the car(s) are on and insuring the derail is in place. We have recently expanded our rail spur and, as part of this spur expansion, our operational plan will be revised as well. The new expansion calls for the addition of new Crowder double derail systems with double lock out on the derail (see photo below – page 3). One lock will be from the BNSF switch crew the second lock will be ours. This insures that both parties are ready for the removal and placement of tank cars. Once these are installed, we will add a

section to our loading procedures outlining the requirements for raising the gangway and safety cage when the loading has been completed.



BNSF has reviewed the drawings and has approved our project. They stipulated that the track must be "blue flagged" whenever the gangway is in the lowered position and it must be used in conjuction with a locked switch or derail. They also commented that normal railcars, including tanks, box cars and hoppers generally do not exceed 16 feet vertical height, but there are cars, such as autoracks, that do exceed 19 feet. We will be required to post and maintain a sign stating – "No auto racks, high cubes or other tall cars due to 18' vertical clearance".

Below is a copy of the drawing with the BNSF approval and comments, I will also attach this document for easier review. Our BNSF contact for this project is Rusty Olsen, Project Engineer, Seattle, WA (206) 625-6189.

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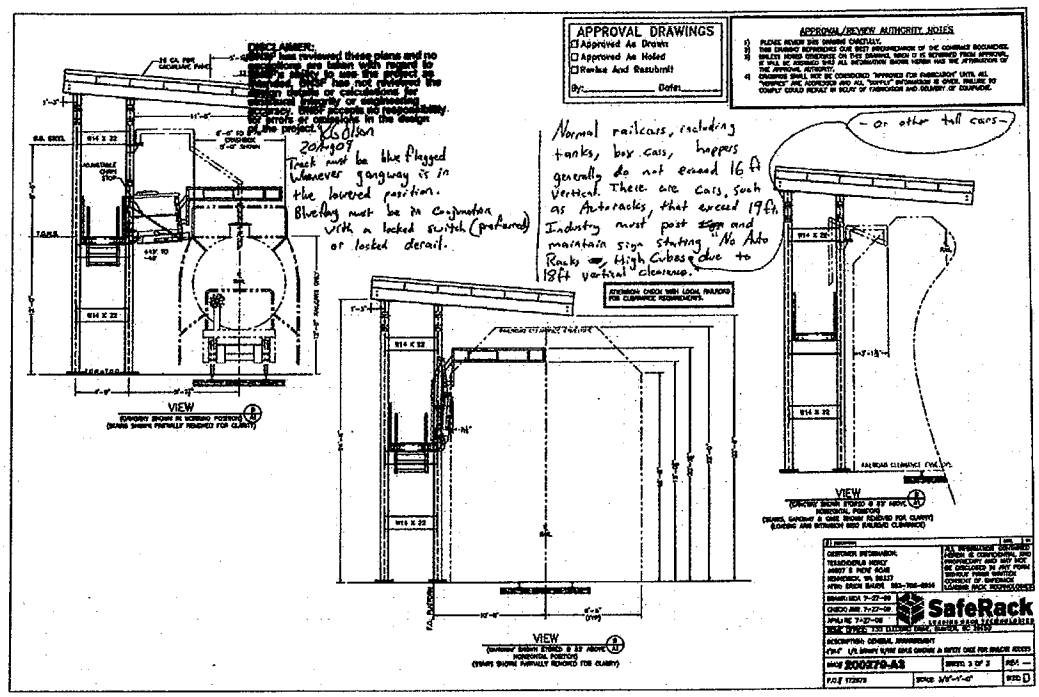

Thank you for your assistance in this mater. I look forward to working with you on this. Feel free to contact me at anytime with any questions or comments that you may have.

Regards,

Robert Inouye

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