



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

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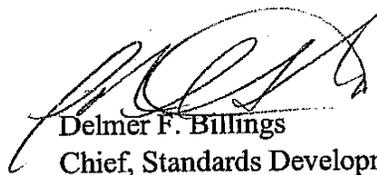
Dear Ms. Brown:

This is in response to your letter of September 27, 1999 requesting clarification on the applicability of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). Specifically you ask whether the HMR are applicable to a company that transports hazardous materials throughout its multi-acre site if the roads are owned by the company and there are "No Trespassing" signs located at each entrance.

The answer is no. As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. "In commerce" excludes from regulation the transportation of hazardous materials on private property. The use of signs, gates, or guard stations at each entrance of a facility to deny public access make the property private, and therefore, not subject to the HMR. This is true whether deliveries are made by company employees or contractors; the HMR do not apply to transportation on private property.

I hope this information is helpful.

Sincerely,



Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



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September 27, 1999

VIA FEDERAL EXPRESS

Edward T. Mazzullo
Director
Office of Hazardous Materials Standards
U.S. DOT/RSPA (DHM-10)
400 7th Street S.W.
Washington, D.C. 20590-0000

RE: Request for Guidance on Applicability of Hazardous Materials Regulations to
Movement of Hazardous Materials over Intra-Plant Roadways

Dear Mr. Mazzullo:

My firm represents a manufacturer that receives hazardous materials for use in its manufacturing operations at its multi-acre plant site. Some of the operations also generate hazardous waste that is moved to a central storage area on the site before being shipped off-site for treatment or disposal. The purpose of this letter is to request guidance on applicability of the Department of Transportation Hazardous Materials Regulations ("HMR") (49 CFR Parts 171-180) to the movement of hazardous materials within the plant site on roads that are privately owned with certain access controls. The facts are set out in detail below.

FACTS

The manufacturing site covers several acres and has multiple buildings. Hazardous materials (e.g., solvents, cylinders of compressed gases, laboratory chemicals, water treatment chemicals) that are used in manufacturing operations are often received at one central building on the property and then delivered by motor vehicle to any number of different buildings where they will be used. (A simplified flow diagram is attached.) Deliveries typically occur during the first shift (i.e., after 7 a.m.). The materials may be transported within the site by the manufacturer's employees or by a company it contracts with to provide intra-plant delivery services. The contractor will use its own trucks or subcontract with individual haulers with their own trucks.

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The roads are owned and maintained by the manufacturer. Gates are present at all the entrances and are closed each evening from approximately 7 p.m. to 5 a.m. the next day, with the exception of one entry and exit point that remains open 24 hours a day. Although guardhouses are not present and card keys are not required to enter at the access points, guards patrol the site on a 24-hour basis. Badges are required to enter buildings on the site. Although a guard is not present, video cameras are located at each access point and are monitored by security personnel at a central location. "No Trespassing" signs are located at each entrance.

On occasion, deliveries of hazardous materials are also made from the central location to two other buildings owned by the company that are located on company property directly across a public road from the main site. These buildings are accessed by driving across a public road maintained by either the state or the city. In one of those cases, the truck actually travels above the state road on a company-owned and maintained bridge.

Hazardous wastes are generated from some of the operations on the main site. These wastes are collected and transported to a central location where they are stored pending shipment off-site to third parties for treatment or disposal. The company has one generator identification number for its entire site and does not execute hazardous waste manifests for shipments between its buildings.

QUESTIONS

1. Are the deliveries of hazardous materials, as discussed in the Facts section above, over the company owned and maintained roads inside the company property subject to the HMR?

The HMR apply generally to transport of hazardous materials "in commerce" and the guidance materials found appear to draw a distinction between public and private roadways. However, the terms are not defined in the regulations. The company described above has always considered its site private property.

2. Does it make any difference if the delivery is made by company employees or contractors?

Many employers today use a combined work force consisting of employees and contractors.

3. If the HMR apply, who should prepare and sign the shipping papers for the intra-plant shipments? If the contractor delivers the hazardous materials around the site must the contractor register with DOT like any other carrier? Do all the HMR requirements apply (e.g., training, shipping papers, placarding) or are there any exemptions for intra-plant transfers?

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4. If the answer to Question 1 above was that the HMR apply generally to shipments of materials within the site, will the HMR apply to transportation of hazardous waste from various buildings to the central storage area before it is shipped off-site for treatment or disposal? (If the HMR do apply to transport of the hazardous wastes, the company needs guidance on the proper shipping name to utilize.)

Since 49 CFR 171.8 defines "hazardous waste" for purposes of the HMR as any material subject to the U.S. Environmental Protection Agency ("EPA") manifest requirements in 40 CFR Part 262, the EPA requirements were reviewed. The provisions of 40 CFR 262.20(f) state that the hazardous waste manifest requirements do not apply to transport of hazardous wastes along a public or private right-of-way within contiguous property under common ownership or control. Therefore, the company does not believe that the waste materials would be subject to the HMR on the basis that they are hazardous waste.

Your assistance by providing answers to these questions and any relevant guidance documents is greatly appreciated.

Sincerely yours,



Carolyn M. Brown

CMB/pje
Enclosure