



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

**JUN 17 1998**

Mr. David A. Sutton  
Pr. Environmental Engineer  
Lockheed Martin Government Electronic Systems  
P.O. Box 1027  
Moorestown, NJ 08057

Ref. No. 98-0048

Dear Mr. Sutton:

This responds to your letter of May 4, 1998, concerning highway transportation requirements for household hazardous wastes under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request information concerning the applicability of consumer commodity exceptions to household hazardous wastes collected at a central collection site and transported to a disposal facility.

You describe a scenario in which citizens transport household hazardous wastes, such as pesticides, paint, aerosols, oil, swimming pool chemicals, and cleaning compounds, to a central pick-up point. After these wastes are dropped off, your company becomes the "offeror" of these hazardous wastes by taking possession of them for transport in leased vehicles to a designated disposal facility. Your individual questions are addressed below.

Q1. Are household hazardous wastes considered consumer commodities under 49 CFR? If so, what are the marking, labeling, packaging, shipping paper, and placarding requirements for the various materials?

A1. A consumer commodity, defined in § 171.8 of the HMR, is a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. This definition includes the types of household hazardous wastes that you describe in your letter.

Consumer commodity exceptions are provided for the following classifications of hazardous materials: Class 2 (compressed gases), Class 3 (flammable and combustible liquids), Class 4 (flammable solids), Division 5.1 (oxidizers), Division 5.2.

(organic peroxides), Division 6.1 (poisonous), Class 8 (corrosives), and Class 9 (miscellaneous). These exceptions can be found in §§ 173.150 - 173.155 and § 173.306 of the HMR. In general, the HMR permit materials that meet the definition of a consumer commodity and that are packaged as provided in the appropriate limited quantity packaging section to be renamed "Consumer commodity" and reclassified as ORM-D. In addition to the exceptions from labeling, placarding, and specification packaging requirements provided for limited quantities, highway shipments of ORM-D materials are not subject to the shipping paper requirements of the HMR unless they are also hazardous substances, hazardous wastes, or marine pollutants. For purposes of the HMR, a "hazardous waste" means any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency (EPA) as specified in 40 CFR part 262. Waste material that is not subject to the EPA waste manifest requirements is not considered hazardous waste under the HMR and may qualify for the ORM-D exceptions provided in the regulations.

Section 173.156 provides for additional exceptions for shipments of ORM-D materials. For example, as provided in § 173.156(b)(1), ORM-D materials that are offered for transportation by a single offeror for transportation to a disposal facility are excepted from the requirements of the HMR provided the materials are unitized in cages, carts, boxes, or similar overpacks and are transported by private or contract motor carrier. In the situation you describe in your letter, the household hazardous wastes that you consolidate and transport to a disposal facility may qualify for the exception provided in § 173.156(b)(1).

Q2. If the material is not a consumer commodity, do the classifications stated under the Hazardous Materials Table apply and should the marking, labeling, packaging, placarding, and shipping paper requirements for the various materials reflect this?

A2. In general, your understanding is correct. However, the HMR include a number of exceptions for specific materials depending on the quantity being transported and the mode of transportation. Column 8A of the Hazardous Materials Table lists the section or sections of the regulations where exceptions for specific materials can be found.

Q3. If the household hazardous wastes are consolidated into drum containers, does the material lose the consumer commodity classification (if it was considered a consumer commodity prior to consolidation into large containers) and, if so, would the

other requirements for marking, labeling, packaging, placarding, and shipping papers under 49 CFR automatically apply to those containers?

A3. No. As stated in the response to question 1 above, consumer commodities ORM-D may be unitized in carts, cages, drums, boxes, or similar overpacks. Such shipments are excepted from the requirements of the HMR when shipped by a single offeror to a disposal facility and transported by a private or contract carrier.

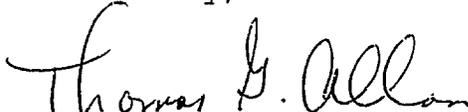
Q4. Does a hazardous waste facility that receives a shipment of household hazardous wastes that is not in compliance with marking, labeling, packaging, placarding, and shipping paper requirements under 49 CFR expose itself to any liability under 49 CFR?

A4. No. The HMR apply to shippers and carriers of hazardous materials. You are responsible for the materials you offer for transportation or transport yourself.

Your letter notes that many municipalities are now establishing programs to collect household hazardous wastes from residents and expresses concern that these municipalities may not be transporting the wastes in compliance with the HMR. You may be interested to know that shipments of hazardous materials transported by a government entity in vehicles operated by government personnel for noncommercial purposes are not subject to the HMR.

I hope this information is helpful. If you need anything further, please do not hesitate to contact me.

Sincerely,



Thomas G. Allan

Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards

GORSKY  
171.1

4 May 1998

U.S. Department of Transportation  
Research and Special Programs Administration  
400 Seventh Street S.W.  
Washington, D.C. 20590  
Attn. Edward T. Mazzullo, Director,  
Office of Hazardous Materials Standards

**Re: 49 CFR USDOT Regulations Applicable to Highway Transport of Household Hazardous Waste**

Dear Mr. Mazzullo:

With regard to the subject matter, we hold a household hazardous waste (HHW) collection event at our facility for our employees and residents of the local community on an annual basis in recognition of Earth Day. We collect up to about 12,000 lbs. of various forms of HHW which may exhibit hazardous qualities such as flammability, corrosivity or toxicity. Such items include: flammable solvent based paints, thinners, stains, varnishes, aerosol paints, adhesives, gasoline, combustible asphalt coatings and tars, waste oil, corrosive household cleaners, swimming pool chemicals (which may be oxidizers), and photographic chemicals, toxic solid or liquid pesticides, asbestos containing siding shingles and mastics.

It is clear to me that the regulations under 40 CFR RCRA provide an exclusion for HHW but I find it difficult to determine how the USDOT regulations apply to this material. All the material is generated from personal residences and is therefore non-industrial and non-commercial. The containers are available to consumers and contain concentrations of chemicals that reflect this.

Our program offers an opportunity to our employees and the residents in our community to dispose of this material in a sound environmentally considerate and safe manner, and eliminates the need for them to drive the materials to a County HHW facility some distance away. We collect and consolidate the waste into drum containers and cardboard boxes and transport it to the County HHW facility on our leased vehicles.

Specific questions I have include:

- (1) Are these materials considered consumer commodities under 49 CFR? If so, what are the marking, labeling, packaging, and shipping paper and placarding requirements for the various materials?
- (2) If the material is not considered a consumer commodity do the classifications stated under the Hazardous Materials Table apply and should the marking, labeling, packaging, placarding and shipping paper requirements for the various materials reflect this?
- (3) If the HHW is consolidated into drum containers does the material lose the consumer commodity classification (if it was considered a consumer commodity prior to consolidation into larger containers) and if so would the other requirements marking, labeling, packaging, placarding and shipping paper requirements under 49 CFR automatically apply to those containers?
- (4) Does a HHW facility that receives a shipment of HHW that is not in compliance with marking, labeling, packaging, placarding and shipping paper requirements under 49 CFR expose itself to any liability under 49 CFR?

It is my experience that this activity is gaining popularity and that municipalities are now establishing monthly or quarterly programs to collect HHW on behalf of their residents. The municipal employees are collecting this material and then transporting the HHW on municipal vehicles to County HHW facility

locations. In many cases the municipal employees do not package the waste responsibly let alone in accordance with 49 CFR because they are under the impression that the HHW is exempt waste.

I do not wish to discourage or inhibit the practice of collecting HHW and I don't feel that it is necessary to regulate HHW as industrial or commercial hazardous material or waste but I do feel some guidance is required from the USDOT and perhaps the USEPA so that these activities can be conducted in the safest manner possible.

I would greatly appreciate any guidance or assistance that you can provide on this matter and I will be certain to share the information with other interested parties.

Please call me at (609) 722-2578 if you have any questions.

Yours truly;



David A. Sutton  
Pr. Environmental Engineer

x/c: file