



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

MAY 2 2005

Mr. Michael Ritchie
Hazardous Materials Specialist
Minnesota Department
of Transportation
Office of Freight and Commercial
Vehicle Operations
Mail Stop 420
1110 Centre Pointe Curve
Mendota Heights, MN 55120-4152

Ref. No. 04-0292

Dear Mr. Ritchie:

This responds to your letter dated December 29, 2004, that requests a clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to certain "pre-transportation" functions as defined in a final rule published on October 30, 2003, under Docket HM-223. Specifically, you ask whether a person (contractor) would be subject to the HMR under the following scenario:

A government (county) agency operates a hazardous waste collection program for households and small businesses. The hazardous waste is collected at designated locations within the county and is packaged and loaded onto county vehicles by a professionally trained contractor. The waste is then transported to a transfer or consolidation facility by county employees operating county vehicles.

The answer to your question is no. The transportation of a hazardous material in a motor vehicle by a local government employee, solely for noncommercial local government purposes, is not in commerce and is therefore not subject to the requirements of the HMR. As you correctly note in your letter, because the hazardous waste is not offered or transported in commerce, the "pre-transportation" functions performed by the contractor are not subject to the HMR.



040292

§ 177.834

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned below the word "Sincerely,".

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

**Minnesota Department of Transportation****Office of Freight and Commercial Vehicle Operations**

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December 29, 2004

Edward Mazzullo
Director, Office of Hazardous Materials Standards
USDOT/RSPA
400 Seventh Street SW
Washington, DC 20590

Stevens
5177.834
Loading/Unloading
04-0292

Dear Mr. Mazzullo,

HM-223 *Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage*, as issued by your agency on October 30, 2003, provided clarification on many issues concerning the offering or transport of hazardous materials by government agencies and contractors working for those government agencies. I would like further guidance on this subject.

A county government environmental agency operates hazardous waste collection programs for households and small businesses. A county government truck/trailer, driven by a county employee, is delivered to various locations around the county to transport the collected hazardous waste to an authorized transfer or consolidation facility.

The actual collection activities at each remote collection site: handling the hazmat packages, opening, filling, and closing packagings, repackaging or bulking the hazmat, and loading them on the county owned trailer for transport, is handled by commercial hazardous waste contractor. The contractor is used, as its employees have required chemical safety training and equipment that the county employees do not have. After each remote collection, a county employee drives the unit back to the county transfer or consolidation facility, for eventual transport to EPA authorized treatment, storage, or disposal facilities.

Some of the activities of the commercial hazardous waste contractors appear to be "pre-transportation functions", as defined in 49 CFR 171.1 (b). Must these activities be performed as required in the hazardous materials regulations, when the subsequent transport is not done in commerce?

Yours truly,

A handwritten signature in cursive script, appearing to read 'Michael Ritchie'.

Michael Ritchie
Hazardous Materials Specialist
Minnesota DOT