



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

APR 19 2006

Mr. Curt Malousek
Kawasaki Motor Mfg. Corp.
6600 NW 27th Street
Lincoln, NE 68524

Ref. No. 06-0060

Dear Mr. Malousek:

This is in response to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) regarding the transportation by motor vehicle and vessel of a utility vehicle powered by an internal combustion engine and equipped with a wet battery and a fuel tank. You state that the wet battery is disconnected with the battery posts protected, and the fuel tank is emptied in preparation for transportation. Your questions are paraphrased and answered below.

Q1. Domestically, the vehicles are transported as "Vehicle, flammable liquid powered," UN3166. UN3166 is not listed in the International Maritime Dangerous Goods (IMDG) Code. How should the shipment be classed when shipping the vehicles internationally by vessel?

A1. The IMDG Code no longer regulates such vehicles. As set forth in § 171.12(b)(3), a material designated as a hazardous material under the HMR, but not subject to the requirements of the IMDG Code may not be transported under § 171.12(b). Therefore, such export shipments when transported in the U.S. to the port area, within the port area, and within U.S. waters must be classed and prepared in accordance with the HMR.

Q2. Do the batteries meet the requirement in § 173.220(c) for protection against leakage? The vehicle remains in an upright position during transportation, the battery cables are not connected and the battery posts are protected by plastic caps.

A2. Provided the batteries are in an upright position and securely installed to prevent movement that may cause damage, the requirement in § 173.220(c) for preventing leakage is met.

Q3. For domestic transportation by motor vehicle, are the vehicles subject to the requirements of Subparts C, D, E and F (shipping papers, marking, labeling and placarding, respectively)?



060060

173.220
176.905(a)(6)

A3. No, provided the shipment meets the provisions of § 173.220, including paragraph (e)(2).

Q4. When shipping domestically by vessel, are the vehicles subject to the requirements of Subparts D, E and F (marking, labeling and placarding, respectively)?

A4. No. The shipment is also excepted from § 172.604 (emergency response telephone number requirement). Additional exceptions and requirements for internal combustion engines transported by vessel are provided in § 176.905.

Q5. Section 176.905(a)(6) prohibits the ignition key from being in the ignition while the vehicle is stowed aboard a vessel. May we have an exemption from this requirement? Keeping the ignition key in the ignition switch is the only way we can ensure that the key is not misplaced by the dealer.

A5. Procedures for applying for exemptions (recently renamed "special permits") are set forth in Subpart B of Part 107 of the HMR. The telephone number for the Pipeline and Hazardous Materials Safety Administration's Office of Hazardous Materials Special Permits and Approvals is (202) 366-4535.

I hope this information is helpful. Please contact this office if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie Mitchell", written in a cursive style.

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

 **Kawasaki**
Kawasaki Motors Manufacturing Corp., U.S.A.

McIntyre
§ 173.220
§ 176.905(a)(6)
Applicability
06-0080

Kawasaki Motors Mfg. Corp.
6600 NW 27th Street
Lincoln NE 68524
402/476-6600
402/476-6672 fax

March 7, 2006

Edward Mazullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PPH-10)
400 7th Street S.W.
Washington D.C. 20590-0001
800-467-4922
202-366-3012 fax

Dear Edward Mazullo:

I am contacting you regarding a change in design that will probably occur in mid-April to one of the products that we currently produce. I recently contacted the HMIC and spoke with a gentleman named Matt, to discuss this situation. He was very helpful in answering most of my questions. However, there were some questions he could not answer and suggested that I write a letter and fax these questions to you for an interpretation.

The proposed change is for our utility vehicle commonly referred to as a "Mule". We produce these vehicles for both domestic and international markets. We primarily ship by two modes of transportation, motor vehicle and vessel. These vehicles are powered by an internal combustion engine and weigh approximately 2000 lbs. We build both gasoline and diesel versions. Currently we ship these vehicles with a dry battery. In mid-April we will start installing a Wet battery that is classified as UN2794. Before the units leave the assembly line the engines are started to verify that all systems on the vehicle are operational. The gas or diesel fuel is injected directly into the fuel tubes. Once the engine run-up is complete all the fuel is vacuumed out of the fuel system. No fuel ever remains in the fuel tank. The utility vehicles are shipped to dealers in a custom-made returnable steel crate, in an upright position. The returnable steel crates are designed in such a manner that they can only be maneuvered in an upright position by a fork truck. The wet battery will be installed in the utility vehicle as designed for operation by the end user. The battery cables will not be connected and the + and - battery posts will be protected by a plastic cap.

Based on the above information, Matt and I have concluded that we can classify this vehicle as a Vehicle, Flammable Liquid Powered, UN3166 (as defined in 49 CFR § 173.220) when shipping domestically by either motor vehicle or vessel. My first question is, when shipping internationally by vessel, how would the shipment be classified since UN3166 is not regulated by the IMDG Code?

Consumer Products Plant

6600 NW 27th Street (68524) • P.O. Box 81469 • Lincoln, NE 68501 • 402/476/6600 • Fax 402/476/6672

Rail Car Facility

6500 NW 27th Street (68524) • P.O. Box 81469 • Lincoln, NE 68501 • 402/476/6600 • Fax 402/476/4372

March 7, 2006
Page 2

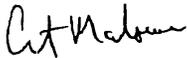
My second question concerns the second sentence of paragraph § 173.220 (c). Do we meet the requirement that the battery is protected against leakage?

My third question regarding sub- paragraphs § 173.220(g) (1) & (2). When shipping domestically by motor vehicle, my interpretation is that we would not be subject to the requirements of subparts C, D, E and F (Shipping papers, marking, labeling and placarding). When shipping domestically by vessel, my interpretation is that we would not be subject to the requirements of subparts D, E and F (marking, labeling and placarding). Are these two statements correct?

My last question is in reference to subparagraph §176.905(a) (6) when shipping by vessel. Can we get an exemption from this rule? The reason we would like an exemption is because we have found that the only way we can insure that the ignition key does not get lost by the dealer is to install the keys in the ignition switch. In addition, since there is no fuel in the fuel system and the battery is disconnected and protected against short circuit, there is no danger of ignition.

In closing, I would like to thank you and your agency for the time and effort that you have given to help answer Kawasaki's questions. I will contact you or your department later this week to verify that you have received the fax and also to discuss a schedule.

Sincerely,



Curt Malousek
Senior Engineer
Kawasaki Motors Manufacturing

CM/bk