



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety Administration**

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

NOV 27 2007

Mr. Randy Tanner
Southwest Electronic Energy Corporation
12701 Royal Drive
P.O. Box 848
Stafford, TX 77497-0848

Ref. No.: 07-0182

Dear Mr. Tanner:

This is in response to your September 19, 2007 letter regarding transportation of lithium batteries for disposal or recycling under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as amended in Docket HM-224C and HM-224E, published August 9, 2007 (72 FR 44929). According to your letter your facility is classified as a "small quantity handler" under the Environmental Protection Agency (EPA) regulations. Your questions are paraphrased and answered as follows:

Q1. May our customers ship lithium batteries to our facility for the purpose of recycling in accordance with the exception in § 173.185(d)?

A1. Yes. As amended in Docket HM-224C and HM-224E, cells and batteries shipped for disposal to a permitted storage facility and disposal site OR for the purpose of recycling may be shipped under the exception in § 173.185(d).

Q2. May our customers ship lithium batteries to our facility for the purpose of disposal in accordance with the exception in § 173.185(d)?

A2. The exception in § 173.185(d) does not apply when your customers ship batteries to your facility for disposal unless you are operating a permitted storage facility and disposal site. However, if your company meets all the criteria to qualify as a permitted storage facility and disposal site and you voluntarily comply with all requirements applicable to a permitted storage facility and disposal site, your customers may ship in accordance with the exception in § 173.185(d).

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

Pollack
§ 173.185
Lithium Batteries
07-0182

September 19, 2007

Dear Mr. Mazullo,

In January 2007 you responded to a letter from us, reference number 06-0275. In our letter we requested clarification on 49CFR, 173.185 paragraph (h) motor vehicle only, for this question:

Could our customers ship lithium battery disposal packs (UN3090, class 9, PGII) to us per regulation 49CFR, 173.185 (h) (1) & (2).

Your response was that exception 173.185(h) does not apply when our customers offer shipment of batteries to our facility unless we are operating a permitted storage facility and disposal site.

The new exemption of final rules 173.185(d) states:

“(d) Cells and batteries, for disposal or recycling. A lithium cell or battery offered for transportation or transported by motor vehicle to a permitted storage facility, disposal site or for purposes of recycling is excepted from the specification packaging requirements of paragraph (a) (4) of this section and the requirements of paragraphs (a) (1) and (a) (6) of this section when protected against short circuit and packed in a strong outer packaging conforming to the requirements of Sec. Sec. 173.24 and 173.24a.”

Today our question is:

In light of the new regulation stated above, could our customers now ship their depleted batteries to us if we then forward the packs on for the purposes of recycling?

Additionally, could you clarify the definition of a permitted storage facility as referenced in 49CFR, 173.185 paragraph (h)?

We want to offer a service to our customers which allow them to send their lithium disposal batteries to our facility for the purposes of recycling. We have spoken with the EPA and understand that if we deem our company as a small quantity handler of universal waste, then we can accumulate batteries up to 5,000 kg or 11,000lbs at any given time without being a permitted storage facility.

Our questions are:

- 1) given the above scenario, will it be OK to allow our customers to send their disposal waste lithium batteries to us and have us store them until we contact a permitted storage and recycling company to pick the batteries up from us?
- 2) Is our interpretation of the small quantity handler of universal waste being applied correctly in this application? Or
- 3) Are we required to be a permitted storage facility in order to store our customers disposal waste lithium batteries at our location, even if we do not exceed the 11,000lbs limit for a small quantity handler of universal waste?
- 4) If you feel we would need to be a permitted storage facility to offer this service to our customers, could you please direct us to the appropriate contact to help us facilitate the process?

Thank you for your assistance in clarifying these questions. If you have any questions or need clarifications, please do not hesitate to contact me at 281-240-4000.

Regards,



Randy Tanner
Traffic Manager
Southwest Electronic Energy Corp.

