



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**AUG 24 2016**

Mr. Larry Moothart  
Manager  
Belshire Environmental Services, Inc.  
25971 Towne Centre Drive  
Foothill Ranch, CA 92610

Reference No. 16-0101

Dear Mr. Moothart:

This letter is in response to your June 7, 2016, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transport of hazardous wastes offered by Conditionally Exempt Small Quantity Generators (CESQGs).

In your letter, you provide the following information:

Under 40 CFR 261.5, CESQGs are exempt from most Environmental Protection Agency (EPA) hazardous waste management regulations if they:

- Identify and count all the hazardous waste they generate (less than 220 pounds per month of non-acute hazardous waste);
- Store no more than 1,000 kg of non-acute hazardous waste and no more than 1 kg of other acute hazardous waste onsite at any time; and
- Ensure that the hazardous waste they produce is sent to an appropriate offsite treatment, recycling, or disposal facility.

We have paraphrased and answered your questions as follows:

- Q1. You ask if CESQGs are required to use the word "Waste" before the proper shipping name for a Department of Transportation (DOT) hazardous material when that material is identified as an EPA hazardous waste that is not subject to the EPA's Hazardous Waste Manifest Requirements prescribed in 40 CFR Part 262.
- A1. The answer is no. The HMR require use of the word "Waste" preceding the proper shipping name of a DOT-regulated hazardous material if the material meets the HMR definition of a "Hazardous waste." Section 171.8 defines a "Hazardous waste" as "any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. EPA specified in 40 CFR Part 262." CESQG wastes generally are not considered hazardous wastes under the HMR because they are not subject to EPA's Hazardous Waste Manifest Requirements.

- Q2. You ask if the State of California can require CESQGs to use the word "Waste" before the proper shipping name for a DOT hazardous material when that material is identified as an EPA hazardous waste that is not subject to the EPA's Hazardous Waste Manifest Requirements prescribed in 40 CFR Part 262.
- A2. Based on the limited information you have provided, it would be premature for us to comment on a State requirement. For your information, the Federal hazardous material transportation law contains strong preemption provisions that allow the Secretary of Transportation, upon request, to make a preemption determination of a non-Federal requirement. Generally, a requirement of a State, local, or Tribal government that conflicts with requirements in the HMR is preempted, unless otherwise authorized by another Federal statute or a waiver of preemption issued by the DOT. Conflicts between the HMR and non-Federal requirements are resolved through this agency's Office of Chief Counsel. This agency makes preemption determinations applicable to specific non-Federal requirements on a case-by-case basis. The regulatory procedures for administrative determinations of preemption are set forth in 49 CFR Part 107, Subpart C.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

Edmonson  
§ 171.1, 172.101, 172.20  
Applicability  
16-0101

**Dodd, Alice (PHMSA)**

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**From:** Rivera, Jordan CTR (PHMSA)  
**Sent:** Tuesday, June 07, 2016 4:31 PM  
**To:** Hazmat Interps  
**Subject:** FW: Manifesting waste from a CESQG

Hi Shante/Alice,

Please submit this for a letter of interpretation. Please let me know if you have any questions.

Thanks,  
Jordan

**From:** Larry Moothart [<mailto:Larry@belshire.com>]  
**Sent:** Tuesday, June 07, 2016 11:48 AM  
**To:** INFOCNTR (PHMSA)  
**Subject:** Manifesting waste from a CESQG

DOT hazardous Material Information Center,

This email is requesting further clarification to the letter referenced as 11-0128 concerning the manifesting of hazardous waste from RCRA CESQG's.

The CESQG requirements are set forth in 40 CFR 261.5. CESQGs are exempt from most hazardous waste management regulations if they:

1. Identify and count all hazardous waste that they generate (< 220 lbs. per month of non-acute hazardous waste);
2. Store no more than 1,000 kg of non-acute hazardous waste and no more than 1 kg of other acute hazardous waste onsite at any time; and
3. Ensure that the hazardous waste they produce is sent to an appropriate offsite treatment, recycling, or disposal facility.

CESQGs are required to make hazardous waste determinations for all of the solid waste they generate at their facility—just like all other generators. CESQG's may generate and accumulate EPA hazardous waste in quantities that are in amounts that qualify them as a CESQG. CESQG's are however not required to manifest the EPA hazardous waste at the federal level. Some States require CESQG's to manifest their waste.

Questions:

1. Are CESQGs required to use the word "Waste" preceding the proper shipping name for a DOT Hazardous Material when the hazardous material is identified as an EPA hazardous waste and is not subject to the manifesting requirement in 40 CFR 262?
2. Can the State of California require the CESQG to use the word "Waste" preceding the proper shipping name for a DOT Hazardous Material when the hazardous material is identified as an EPA hazardous waste and is not subject to the manifesting requirement in 40 CFR 262 ?

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