



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

1200 New Jersey Avenue, SE
Washington, DC 20590

JAN -7 2010

Mr. Milton Bush
Environmental Science Section
American Council of Independent Laboratories
1050 17th Street, NW, Suite 1000
Washington, DC 20036

Ref. No. 09-0288

Dear Mr. Bush:

This responds to your November 30, 2009 letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the transportation of environmental samples. Specifically, you request confirmation that recent changes made to the HMR do not affect previous guidance provided in letters of interpretation.

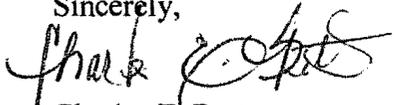
In your letter, you refer to changes made to the small quantity exceptions in § 173.4 and adoption of new exceptions for excepted quantities in § 173.4a and de minimus quantities in § 173.4b and request confirmation that the clarification provided in our letters Ref. No. 98-0111 (June 25, 1998); Ref. No. 02-0093 (February 13, 2003); and Ref. No. 08-0222 (October 3, 2008) remain valid. Specifically, you ask for confirmation that environmental samples are not subject to the package testing requirement for excepted quantities found in § 173.4a.

The letters of interpretation remain valid. Changes made to § 173.4 and the adoption of new §§ 173.4a and 173.4b under final rule HM-215J/224D (74 FR 2200, January 14, 2009) do not affect these letters except that changes made to § 173.4 now limit transportation of hazardous materials under the conditions of that section to domestic highway and rail transport. The letters you reference provide clarification of the applicability of the HMR to the classification of environmental samples as hazardous materials. If an environmental sample does not meet the definition of a hazardous material (see § 171.8), then the material is not subject to the HMR including the provisions in §§ 173.4, 173.4a, or 173.4b. If an environmental sample meets the definition of a hazardous material and is intended to be transported by air, then shippers

that elect to transport the material in conformance with the conditions § 173.4a must comply with the package testing requirements in § 173.4a, paragraph (f).

I hope this information is helpful. If you have further questions, please contact this Office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles E. Betts".

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards

November 30, 2009

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

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§173.4
Small Quantity Exceptions
09-0288

Subject: Recent Changes to 49 CFR Part 173.4 Relative to Prior Clarifications.

Dear Mr. Mazzullo:

The American Council of Independent Laboratories (ACIL) is the trade association representing independent, commercial scientific and engineering firms. ACIL's members are professional services firms engaged in testing, product certification, consulting, and research and development and represent 85% of the commercial environmental testing capacity in the United States.

Our members are very concerned about the language of the above referenced final rule, published on January 14, 2009, specifying changes to 49 CFR Part 173.4 that resulted in the addition of sections 4a and 4b. Specifically, we are seeking confirmation that the following clarifications continue to apply to the shipment of preserved environmental samples.

Clarification Reference No. 08-0222 – From URS Corporation. (This is a re-clarification of an original interpretation, reference number 02-0093, which was published February 13, 2003.)

Clarification Reference No. 02-0093 – From the EPA (regarding preservatives for environmental samples)

Clarification Reference No. 98-0111 – From the Department of Environmental Quality in Lansing, MI (refers to the use of methanol to preserve soil samples)

If these clarifications remain in effect and preserved samples are not subject to the HMR, our members would like re-confirmation that environmental laboratories shipping sample containers and samples are exempt from performing the package test described in 173.4a(f). We further request that you provide guidance regarding the air transport of preserved environmental samples for environmental analysis if the clarifications no longer apply.

Thank you in advance for your assistance. If you need any additional information or have any questions regarding this request, please contact me.

Kindest regards,

Milton Bush
CEO, American Council of Independent Laboratories (ACIL)
Environmental Sciences Section

AMERICAN COUNCIL OF INDEPENDENT LABORATORIES

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