



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

APR 06 2018

Mitchell Disney  
Senior Deputy District Attorney  
Ventura County District Attorney's Office

Reference No. 18-0043

Dear Mr. Disney:

This letter is in response to your August 25, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to flammable wastes exempt from Environmental Protection Agency's (EPA) hazardous waste requirements. Specifically, you ask whether a substance comprised of Oil and Gas Exploration and Production Wastes with a flash point of less than 140 °F meeting the ignitability criteria for "D001 Unlisted Hazardous Wastes Characteristic of Ignitability," would be regulated by the United States Department of Transportation and the Pipeline and Hazardous Materials Safety Administration (PHMSA), and if so, what specific regulatory and enforcement provisions would be implicated. You further explain the material is transported in bulk packagings exceeding 119 gallons by public highway. Each vacuum or tanker truck contains between 75 and 120 barrels of hazardous materials, with each barrel carrying 42 gallons of hazardous materials.

In accordance with § 173.22, it is the shipper's responsibility to properly classify a hazardous material. This Office does not generally perform that function. However, based on the information you provided, a material with a flash point below 140 °F will be subject to the HMR as either a Class 3 flammable or combustible liquid per §§ 173.120 and 173.121.

Bulk packages of Class 3 flammable liquids are fully subject to all the requirements of the HMR. Bulk packaging provisions for Class 3 flammable liquids are prescribed in § 173.243 for Packing Group I and § 173.242 for Packing Groups II and III. The hazard communication requirements in 49 CFR Part 172, Subparts C through H apply. In addition, the registration requirements in 49 CFR Part 107, Subpart G of this subchapter also apply.

For domestic transportation, a flammable liquid with a flash point at or above 32 °C (100 °F) that does not meet the definition of any other hazard class may be reclassified as a combustible liquid. The HMR except combustible liquids from certain requirements, as described in § 173.150(f). Combustible liquids are excepted from specification packaging, but packages must still comply with the general packaging requirements of 49 CFR Part 173, Subpart B. Specifically, pursuant to § 173.150(f)(3), a combustible liquid that is in a bulk packaging is not subject to the requirements of the HMR except those pertaining to:

- Shipping papers, waybills, switching orders, and hazardous waste manifests;
- Marking of packages;
- Display of identification numbers on bulk packages;
- Placarding requirements of 49 CFR Part 172, Subpart F of this subchapter;
- Reporting incidents as prescribed by §§ 171.15 and 171.16 of this subchapter;
- The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d) of this subchapter;
- The training requirements of 49 CFR Part 172, Subpart H of this subchapter;
- Emergency response information requirements of 49 CFR Part 172, Subpart G of this subchapter; and
- Registration requirements of 49 CFR Part 107, Subpart G of this subchapter.

While this mixture meets the definition of a hazardous material, it would not be considered a hazardous substance or hazardous waste. The definition of "hazardous substance" in § 171.8 excludes "crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance." The definition of "hazardous waste" in § 171.8 is limited to materials that require a Uniform Hazardous Waste Manifest by the EPA under regulations promulgated under the authority of the Resource Conservation and Recovery Act (RCRA). The guidance you reference from EPA exempts producers and transporters from a hazardous waste manifest, and therefore, the HMR requirements specific to "hazardous wastes" would not apply. However, such an exemption would have no impact on PHMSA's authority to regulate the transportation in commerce of a hazardous material as defined in § 171.8.

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  
Standards and Rulemaking Division





**OFFICE OF THE DISTRICT ATTORNEY**  
**COUNTY OF VENTURA, STATE OF CALIFORNIA**

**GREGORY D. TOTTEN**  
District Attorney

August 25, 2017

Ms. Laura Ulmer  
United States Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, S.E.  
PHC-10, Room E26-301  
Washington, D.C. 20590-0001

Re: Request for Letter of Interpretation from Office of Legal Counsel  
for Pipeline and Hazardous Materials Safety Administration

Dear Ms. Ulmer:

The Ventura County District Attorney's Office respectfully requests a formal letter of interpretation from the Office of Legal Counsel for Pipeline and Hazardous Materials Safety Administration (PHMSA), a division of the United States Department of Transportation (DOT). For the purposes of answering the query below, please assume the following to be true:

This matter concerns the transportation of Oil and Gas Exploration and Production Wastes (E&P Wastes) over public highways from the point of origin to a facility where storage, treatment and disposal occur. The E&P Wastes in question constitute "[w]astes generated during the exploration, development, and production of crude oil, natural gas, and geothermal energy [that] are categorized by EPA as 'special wastes' and are exempt from federal hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA)."

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October

[gas.pdf](#)

Lehman  
Combustible liquid  
18-0043

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**SPECIAL PROSECUTIONS**

Ms. Laura Ulmer  
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tanker trucks with average volumes of 75-120 barrels of hazardous materials, with each barrel constituting 42 gallons of material/waste.

Analytical laboratory test results demonstrate flammable and ignitable characteristics pursuant to 49 CFR 173.120 (a) and are designated as a Hazardous Substance in Table 1 to Appendix A to 49 CFR 172.101, to wit — D001 Unlisted Hazardous Wastes Characteristic of Ignitability.

The Ventura District Attorney requests that PHMSA's Office of Legal Counsel provide a formal letter of interpretation analyzing and concluding whether the described transportation activities would be subject to classification and regulation by DOT and PHMSA, and, if so, what specific regulatory and enforcement provisions would be implicated.

Thank you for your assistance and, if there is any ambiguity in the assumptions submitted or query posed, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

MITCHELL F. DISNEY  
Senior Deputy District Attorney

MFD/po