



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

SEP 20 2018

Frank Nesbihal
Principal Environmental Engineer
Florida Power & Light Company
700 Universe Boulevard JES/JB
Juno Beach, FL 33408

Reference No. 18-0081

Dear Mr. Nesbihal:

This letter is in response to your May 25, 2018, email and subsequent phone conversation requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipment of PCB waste. Specifically, you provide the following scenario:

- Florida Power & Light Company ships PCB waste for disposal.
- The shipper of PCB waste must prepare a U.S. Environmental Protection Agency (EPA) Form 22 (uniform hazardous waste manifest) in accordance with 40 CFR 761.207, but not in accordance with 40 CFR Part 262.
- The shipment of PCB waste is shipped in quantities of less than 1 pound per package.

We have paraphrased and answered your questions as follows:

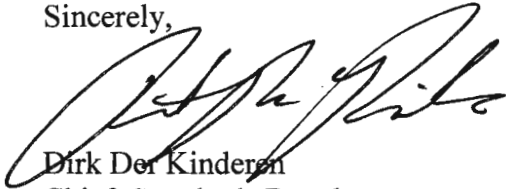
- Q1. You ask if the shipment of PCB waste in your scenario meets the HMR definition of a hazardous waste.
- A1. The answer is no. In accordance with § 171.8, a hazardous waste is defined as a material that is subject to the Hazardous Waste Manifest Requirements of the EPA specified in 40 CFR Part 262. As indicated in your request, the PCB waste is not subject to 40 CFR Part 262 and, therefore, does not meet the definition of a hazardous waste.
- Q2. You ask if the shipment of PCB waste in your scenario meets the definition of a hazardous substance.
- A2. The answer is no. In accordance with § 171.8, a hazardous substance is a material, including mixtures and solutions, that (1) is listed in Appendix A to § 172.101; (2) is in a quantity, in one package, which equals or exceeds the reportable quantity (RQ) listed in the Appendix A to § 172.101; and (3) when in a mixture or solution, is in a concentration by weight which equals or exceeds the concentration corresponding to the RQ of the material, as shown in the table in § 171.8. Appendix A to § 172.101 lists the RQ for PCB as 1 pound. As mentioned in your scenario, the PCB waste is shipped in a quantity of less than 1 pound per package; therefore, the PCB waste does not meet the definition of a hazardous substance.

Q3. You ask if the shipment of PCB waste in your scenario is subject to the HMR, including training requirements of Part 172, Subpart H.

A3. The answer is no, unless the shipment meets the definition of a marine pollutant (see § 171.8). Special provision 140, which is associated with “UN2315, Polychlorinated biphenyls, liquid, 9, II” and “UN3432, Polychlorinated biphenyls, solid, 9, II,” indicates that the material is only regulated when shipped as a hazardous substance or marine pollutant (see A2). Therefore, unless the material meets the definition of a marine pollutant, or any other hazard class or division, the shipment is not subject to the HMR, including the training requirements of Part 172, Subpart H.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Dirk Der Kinderen', written in a cursive style.

Dirk Der Kinderen
Chief, Standards Development
Standards and Rulemaking Division

Geller
Shipment
18-0081

January, Ikeya CTR (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Friday, May 25, 2018 4:49 PM
To: Hazmat Interps
Subject: FW: PCB Transportation Question

Hi Ikeya,

Below is a request for a letter of interpretation. Mr. Nesbihal spoke with Andrew regarding his request. Please let me know if you have any questions.

Thanks,
Jodi

From: Nesbihal, Frank J [mailto:Frank.J.Nesbihal@fpl.com]
Sent: Friday, May 25, 2018 12:18 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Street, Barry <Barry.Street@fpl.com>; Dann, William <William.Dann@fpl.com>; Jones, Mark <Mark.A.Jones@fpl.com>; Cevallos, Porfirio <Porfirio.Cevallos@fpl.com>
Subject: PCB Transportation Question

To Whom It May Concern:

I am kindly requesting a written interpretation regarding our understanding of the transportation of PCB wastes under the HMR. Florida Power & Light Company (FPL) occasionally is involved with the shipment of PCB wastes for disposal. In accordance with 40 CFR 761.207, certain PCB wastes (i.e., TSCA wastes) must be shipped using a uniform hazardous waste manifests. As defined in the HMR at 49 CFR 171.8, a "hazardous waste" is any material that is subject to the *hazardous waste manifest* requirements of the EPA as specified in 40 CFR 262. The scope of Part 262 is stated in 262.10 as applying only to hazardous wastes as defined in 40 CFR 261.3 (i.e., RCRA hazardous wastes). Therefore, by DOT referencing Part 262 they are only applying to shipments of RCRA hazardous wastes.

It is our understanding that PCB wastes are not regulated in Part 262 and are therefore not considered to be RCRA hazardous wastes. With that, when transporting PCB wastes, they are regulated in accordance with Special Provision 140 in the HMR only if a reportable quantity (RQ) is in a package (i.e., 1 lbs. or more of PCB's). Although 40 CFR 761.207 does require that certain PCB wastes be shipped using a uniform hazardous waste manifest, this requirement does not trigger any DOT requirements, including training under 49 CFR 172 Subpart H, unless the PCB wastes have a RQ amount (i.e., 1 lbs. or more of PCB's) in a package.

Please let me know if our interpretation is correct. Your expeditious response would be greatly appreciated. If you require any further information, please feel free to contact me at frank.nesbihal@fpl.com.

Respectfully,
Frank Nesbihal
Principal Environmental Engineer
Florida Power & Light Company
700 Universe Blvd JES/JB
Juno Beach, FL 33408