



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

OCT 11 2018

1200 New Jersey Avenue, SE
Washington, DC 20590

Dan Lane
Regulatory Compliance Manager
Interstate Batteries Recycling, LLC
12770 Merit Drive, Suite 300
Dallas, TX 75251

Reference No. 18-0101

Dear Mr. Lane:

This letter is in response to your June 4, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipment of lead-acid batteries for purposes of recycling. You explain that your company wants to ship both intact and broken, damaged, or burned lead-acid batteries in the same vehicle for transport to secondary lead smelters for recycling. Specifically, you ask whether these batteries may be shipped together in compliance with 49 CFR 173.159(e) and (k), and if they are subject to additional requirements.

The answer is yes. Electric storage batteries containing electrolyte, acid, or alkaline corrosive battery fluid (i.e., wet batteries) that are intact and broken, damaged, or burned may be transported in the same vehicle for the purposes of recycling. Provided the requirements in 49 CFR 173.159(e) are met, wet batteries are excepted from the HMR when transported by highway or rail. Additionally, 49 CFR 173.159(k) allows for highway or rail transportation of damaged wet electric storage batteries for recycling purposes. Batteries that are transported in accordance with the requirements in paragraph (k) are eligible for the exception provided in 49 CFR 173.159(e). Please note that in addition to the conditions listed in paragraph (k) of this section, damaged wet electric storage batteries must also meet the requirements of 49 CFR 173.159(a).

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



Ballengue
Batteries
18-0101

June 4, 2018

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue SE East Building, 2nd Floor
Washington, DC 20590

Request for a formal letter of interpretation

Dear Mr. Kelley:

Interstate Batteries, Inc. occasionally wants to ship to secondary lead smelters pallets of intact scrap lead-acid batteries as well as broken, damaged, or burned batteries in leakproof containers on the same truck. If these scrap lead-acid batteries are shipped in complete compliance with 49 CFR 173.159(e) and 49 CFR 173.159(k), can they be shipped without needing to comply with any other requirements of 49 CFR Title 49 → Subtitle B → Chapter I → Subchapter C?

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink that reads "Dan Lane". The signature is written in a cursive, flowing style.

Dan Lane
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HM-218H Preamble:

Section 173.159

Section 173.159 prescribes requirements applicable to the transportation of electric storage batteries containing electrolyte acid or alkaline corrosive battery fluid (*i.e.*, wet batteries). This section outlines packaging requirements, exceptions for highway or rail transport, and tests that batteries must be capable of withstanding to be considered as non-spillable. However, there is no authorization to transport nor are there any requirements or instructions for shippers of damaged or leaking wet batteries on how to prepare these items for transport. PHMSA received a request for a letter of interpretation (Ref. No. 06-0031) to clarify whether a shipper of a damaged wet battery may utilize the exception from full regulation provided in § 173.159(e). In response, we stated that a damaged battery may be shipped in accordance with § 173.159(e) provided: (1) It has been drained of battery fluid to eliminate the potential for leakage during transportation; (2) it is repaired and/or packaged in such a manner that leakage of battery fluid is not likely to occur under conditions normally incident to transportation; or (3) the damaged or leaking battery is transported under the provisions of § 173.3(c).

PHMSA proposed adding a new paragraph (j) to § 173.159 to address this provision. However, a final rule published January 21, 2016 [Docket No. PHMSA-2013-0042 (HM-233F); 81 FR 3635] added a paragraph (j) to account for nickel cadmium batteries containing liquid potassium hydroxide. Therefore, all references to the previously proposed paragraph (j) will be to the new paragraph (k). PHMSA received positive feedback from commenters with the ATA, the UPS, the USWAG, and Veolia voicing general support for this amendment. Veolia requested that “cargo vessel” be added as a mode of transportation; however, as this was not proposed and that inclusion would need an analysis from both PHMSA and the USCG, and we will not be authorizing vessel transportation in this final rule.

The Battery Council International (BCI) also commented on this provision. While they voiced strong support for the creation of a new paragraph to address damaged wet batteries, they had concerns that the proposed regulatory text was unclear, did not take into account the industry standard, and may inadvertently eliminate existing exceptions for wet batteries. To supplement their comments, a meeting was requested by representatives of BCI with PHMSA to clarify their comments. Notes from that August 11 meeting can be found in the docket for this rulemaking. The BCI's primary concern is that a different packaging method referenced in previous PHMSA letters of interpretation (Ref. Nos. 09-0227 and 06-0062) that utilizes leak-proof packaging in other than an intermediate/outer configuration (*i.e.*, single polyethylene bag) is absent from paragraph (j). BCI asserts that the single polyethylene bag method is sufficient to prevent leakage of the battery acid during transportation and that changing this standard industry practice will be highly disruptive, costly, and likely to result in considerable confusion. During the meeting, it emphasized that this was the predominant method of transporting damaged wet batteries by a vast majority of industry.

PHMSA agrees with BCI's concerns and it was not our intent to undo progress made to address safety concerns by industry and PHMSA in the past by not allowing for this packaging configuration. Therefore, we are amending paragraph (k) (*i.e.*, previously proposed paragraph (j)) to allow for this packing method. PHMSA believes that public safety would be better served by allowing the use of a method that is known and widely used by industry, that has a strong safety record for transporting damaged wet batteries, and on which affected hazmat employees are trained. The BCI further points out confusion in the proposed regulatory text in paragraphs (j)(2) and (3), stating that it is unclear how a shipper could comply with the packaging requirement in § 173.159(j)(2) without also complying with § 173.159(j)(3). PHMSA agrees with this comment; although, paragraphs (j)(2) and (3) are intended to be used in tandem, they currently appear to be separate conditions for transport. Therefore, we are amending the regulatory text to consolidate the previously proposed (j)(2) and (3) into one paragraph, now (k)(2). Lastly, BCI requests that clarification be added to ensure that there is no confusion that the batteries shipped under this paragraph are still eligible to be shipped using

the exception found in § 173.159(e). PHMSA agrees. It was never our intent to prohibit the use of this exception, and it was an oversight in the NPRM not to specify this. Therefore, we are including a provision to clarify the eligibility of damaged wet batteries for exception under paragraph (e) when transported in accordance with § 173.159(k).

PHMSA is adding a new paragraph (k) in § 173.159 to address the need for provisions that allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries for purposes of recycling. Note that in addition to the conditions listed in paragraph (k), damaged wet electric storage batteries must also meet requirements of § 173.159(a).

PHMSA is reinserting language into § 173.159(e)(4) of the HMR indicating that the transport vehicle may not carry material shipped by any person other than the shipper of the batteries. This language was inadvertently deleted from the HMR when PHMSA published a final rule titled "Hazardous Materials: Reverse Logistics" under Docket HM-253 (81 FR 18527; March 31, 2016). As revised by HM-253, § 173.159(e)(4) now states that a carrier may accept shipments of batteries from multiple locations for the purpose of consolidating shipments of batteries for recycling, which creates confusion in the context of the section. The intent of the HM-253 final rule was to allow carriers to consolidate shipments of batteries from multiple locations for the purpose of recycling. To correct this inadvertent deletion, in this final rule we are revising § 173.159(e)(4) by retaining the previous text and providing a clear exception when batteries are consolidated for recycling.