



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

JAN 17 2006

Mr. Phil Stewart  
The Dow Company  
1424 Vidal Street  
Sarina, ON N7T 8C6

Ref. No. 05-0298

Dear Mr. Stewart,

This is in response to your letter dated November 20, 2005, concerning the transportation of a waste that does not meet the definition of hazardous waste, but may meet the definition of a hazardous material in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the material described above is subject to the HMR, including the shipping paper requirements in Part 172, Subpart C, if your company transports it across public roads.

For the purposes of the HMR a "hazardous waste" is any material subject to the Hazardous Waste Manifesting Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262 (§ 171.8). Therefore, a material is not considered to be a hazardous waste if it is not required to be manifested as a hazardous waste under 40 CFR Part 262. However, the shipper is required to determine if the material meets the definition of a hazardous material provided in § 171.8 (Shipper's Responsibility; see § 173.22). The definition of a hazardous material is not limited to hazardous wastes, it also includes:

1. Hazardous substances;
2. Marine Pollutants;
3. Elevated temperature materials;
4. Materials designated as hazardous in the Hazardous Materials Table (HMT; 49 CFR 172.101); and
5. Materials that meet the defining criteria for hazard classes and divisions in Part 173 of the HMR.



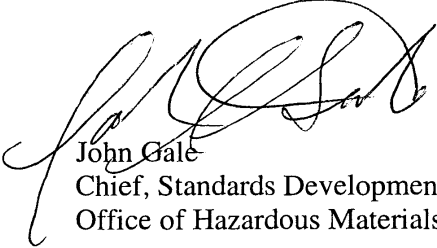
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171.11  
172.205

If you determine that your material is not a hazardous waste, but does meet the definition of a hazardous material then it must be transported in accordance with the HMR, including the shipping paper requirements in Part 172, Subpart C, when moved on or across roads that permit public access.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,



John Gale  
Chief, Standards Development  
Office of Hazardous Materials Standards

Nickels, Matthew <PHMSA>

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From: pjstewart@dow.com  
Sent: Thursday, November 10, 2005 1:45 PM  
To: INFOCNTR <PHMSA>  
Subject: Information Center Comments/Questions

BAH  
\$171.11  
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ICAO/Shipping  
Papers  
05-0298

Below is the result of your feedback form. It was submitted by  
Phil Stewart (pjstewart@dow.com) on Thursday, November 10, 2005 at 13:45:24.

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Email: pjstewart@dow.com

Name: Phil Stewart

Category: Other questions?

Organization: The Dow Chemical Company

Street: 1425 Vidal St. S

City: Sarnia

Zip Code: N7T 8C6

Country: ON

Phone: 519 339 5047

Fax: 519 339 3912

Comments: Part 172.205 - Hazardous Waste Manifest

The regulation indicates that a waste manifest is required if hazardous waste is transported "in commerce."

It is my understanding that if a hazardous waste truck travels along or transverses across a public highway, the DOT HMR apply i.e. specification packaging, placarding and the issuance of a waste manifest.

However, under 40CFR 262.20(f), 262.32(b) - Waste Manifest, "The requirement states that this subpart does not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way"

I am requesting clarification & applicability of the DOT waste manifest requirements vs. 40CFR 262.20(f) & 40CFR 262.32(b) requirements. (1) Which regulatory authority takes precedence or jurisdiction over this type of shipment particularly pertaining to the question of issuing a waste manifest? (2) Would DOT shipping papers other than waste manifest suffice?