



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

Office of the  
Chief Counsel

400 Seventh St. S.W.  
Washington D.C. 20590

JUN 13 1997

Cynthia Garcia, Esq.  
Assistant City Attorney  
Office of the City Attorney  
1000 Throckmorton  
Fort Worth, Texas 76102

Dear Ms. Garcia:

I am responding to your February 7, 1997 letter and telephone conversations with a member of my staff concerning the jurisdiction of the Federal hazardous materials transportation law (Federal hazmat law) (49 U.S.C. §§ 5101 et seq.) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-180) as they apply to wreckers towing motor vehicles that contain hazardous materials. I apologize for the delay in responding to your letter and hope this delay has not caused you any inconvenience.

The Research and Special Programs Administration (RSPA) is one of the agencies within the U.S. Department of Transportation that is responsible for enforcing the requirements of the Federal hazmat law and the HMR. The HMR includes requirements for the classification, hazard communication, packaging, handling, loading and unloading of hazardous materials offered for or transported in commerce. As stated in 49 C.F.R. § 171.1, RSPA's jurisdiction, with respect to transportation by public highway is currently limited to interstate and foreign carriers by motor vehicle, and intrastate carriers by motor vehicle so far as the HMR apply to hazardous wastes, hazardous substances, flammable cryogenic liquids in portable tanks and cargo tanks, and marine pollutants. Effective October 1, 1997, the scope of the HMR expands to include the offering for transportation or transporting hazardous materials in interstate, intrastate, and foreign commerce by motor vehicle.

RSPA does view a wrecker which is towing a motor vehicle containing hazardous materials on a public highway, as transporting hazardous materials in commerce. Therefore, the Federal hazmat law and the HMR would apply to a wrecker which tows a disabled motor vehicle containing hazardous materials on

a public highway. However, the Federal hazmat law and the HMR do not apply to transportation that is entirely on private property and neither follows nor crosses a public highway.

RSPA has provided limited relief from the HMR under 49 C.F.R. § 177.823. This provision allows, under emergency situations where the movement of the disabled transport vehicle is necessary to protect life or property, a vehicle containing hazardous materials to be moved without being marked and placarded in accordance with the HMR. Under this exception, a wrecker would not need a placard and markings when towing a disabled transport vehicle on a public highway. This exception only applies to the extent an emergency situation exists and movement of the disabled transport vehicle is necessary to protect life or property. Thus, under this exception, the disabled transport vehicle may be moved only the minimum distance necessary to reach a place where the transport vehicle can be repaired safely.

RSPA has provided this limited exception to encourage the rapid removal of any disabled transport vehicle from a public highway during an emergency situation. However, during a nonemergency situation, the placarding, marking and all other provisions of the HMR would apply to a wrecker when it is towing a disabled transport vehicle on a public highway. Under these provisions, the operator of the wrecker must verify that the disabled transport vehicle is displaying the required placards and there are accompanying shipping papers. The shipping papers must accompany the disabled transport vehicle to its new location. The operator of the wrecker must have general awareness, safety, and function-specific hazard materials training (see 49 C.F.R. Part 172, Subpart H). These HMR requirements provide a minimal level of safety when the operator of wrecker assists a disabled transport vehicle which contains hazardous materials.

Your letter also asked whether the operator of the wrecker would have to comply with 49 CFR Parts 171-180 if there was a hazardous material incident during the towing operation. The answer is yes, because the wrecker's operator/owner is considered a "carrier" as defined in 49 C.F.R. § 171.8 and as the term is used in 49 C.F.R. §§ 171.15 or 171.16. In addition, RSPA encourages each person to report promptly each hazardous materials incident which, in the person's judgment, poses a continuing danger to life or property. In addition, the wrecker's operator/owner may be subject to a variety of other Federal, state or local regulations in the event of a hazardous materials incident.

In addition, you asked whether 49 C.F.R. Part 387 or any other regulations would apply to the wrecker's activities. Part 387 prescribes minimum levels of financial responsibility for motor carriers and is not part of HMR. It is my understanding that the Federal Highway Administration, Office of the Chief Counsel, Motor Carrier Law Division has received a copy of your letter and has responded to this issue. If you have any further questions concerning minimum levels of financial responsibility for motor carriers, please contact Mr. Joseph Solomey at (202) 366-0834.

I hope this response is useful. If you have any additional questions concerning the law or regulations discussed in this letter, please call Robert A. Monniere at 202-366-4400.

Sincerely,



Edward H. Bonekemper, III  
Assistant Chief Counsel for  
Hazardous Materials Safety