



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

APR -7 2004

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

Mr. Robert R. Chaney, PE
5th Ohio Light Artillery, Ltd.
870 Carpenter Road
Loveland, Ohio 45140

Ref. No: 98-0285

Dear Mr. Chaney:

This is in response to your letter and subsequent telephone conversation with Diane LaValle, of my staff, regarding the transportation of black powder for a not-for-profit educational organization which puts on displays that include firing of antique Civil War Muzzle loading pistols, rifles, mortars and cannons for historical and cultural purposes. You state that you transport between 400 and 600 pounds of black powder a year which is classed as Division 1.1 explosives and Division 4.1 flammable solid materials under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You ask whether such transportation is covered by the HMR. I apologize for the delay in responding.

The answer is yes. As provided by § 171.1, the HMR govern the safe transportation of hazardous materials in commerce. The fact that your organization is not-for-profit is not relevant in this scenario.

If you need further clarification please call our Hazardous Materials Information Center toll free on 800 467-4922. I hope this information is helpful.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



980285

171.1

Associate Administrator for Hazardous Materials Safety
Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, SW.
Washington, D.C. 20590-0001
Attention: DHM-31

Harim
§ 171.1
98-0285

Re: Non commercial transportation of Hazardous Material (Black Powder - Class 1)
for antique firearms and antique devices.

September 15, 1998

Dear Sir:

I am the statutory agent and a non-paid volunteer for an Ohio incorporated not-for-profit IRS approved 401(c)3 educational organization chartered as the *5th Ohio Light Artillery, Ltd.* All the "members" are non compensated volunteers who receive no tangible benefits.

We highway transport and use between 400 and 600 pounds of black powder (Division 1.1 & 4.1) a year in conjunction with the firing of antique Civil War muzzle loading pistols, rifles, mortars and cannons for historical and cultural purposes. We currently transport no more than 50 pounds of black powder per vehicle but would like to increase that amount for local events. We use cars, vans and/or pickup trucks rated less than 10,000 GVWR. We use flat bed trailers of less than 10,000 GVWR to transport the cannons. Not all of our people have a CDL with Hazmat endorsement. Please see attached letters. Note that the organizations who sponsor the events are also nonprofit charitable organizations.

Some of our black powder (1Fg thru 4Fg) is packaged in accordance with US DOT-E 8958 (10th rev.) or made into cannon bore size "blank cartridges" of a 3-inch diameter by our group. For transportation and use in the cannon the blank cartridges have a outer covering of 6 layers of heavy duty aluminum foil formed into a cylindrical shape, each containing not more than 12 oz. of black powder. We use a blank cartridge assembly procedure approved by the American Artillery Association and the State of Massachusetts for the blank cannon cartridges. The outer transport packaging is a GOEX or Elephant (Petro-Explo) brand fiberboard box containing not more than 25 inner packages per box. A few times a year we need to transport more than 50 pounds of GOEX or Elephant (Petro-Explo) brand black powder (1Fa thru 4Fa and 1Fg thru 4Fg) while it is in the original packaging. This packaging consists basically of 25 pounds of black powder in 1 pound metal cans or 25 pounds in a heavy wall conductive plastic receptacle in a fiberboard box furnished by the original supplier. We do not transport mixed loads of hazardous materials or carry flares or fusees in the same motor vehicle. We carry 10 B:C fire extinguishers, MSDS's, ATF licenses, FMCSR Part 397, ERG, travel in groups with CB radios, and watch for route restrictions for hazardous material.

I have received *inconsistent opinions* from State and local transportation enforcement agencies as to the applicability of various transportation regulations to our group's transportation of black powder to and from Civil War reenactments and educational demonstrations.

When we travel to events with our cannons on open trailers, we attract the attention of local law enforcement and EMS personnel. It is easy to visually determine that the cannons have been fired with black powder and we are transporting some sort of explosive powder. We wish to resolve as far as possible and to document the perceived problem area of black powder transportation before we are detained somewhere and our black powder confiscated unnecessarily.

We feel that we are in compliance with Bureau of Alcohol, Tobacco, and Firearms storage regulations since the local ATF agent inspects my licensed bunker and explosive records yearly without any complaints. The ATF cited regulations that point out that the storage requirements for black powder in amounts more than 50 lbs. apply to all users of explosives. My ATF licenses as well as my Ohio Fireworks Exhibitor license are current. The black powder is purchased from a local fireworks manufacturer and from out of state dealers who ship up to 100 pounds by a single UPS truck.

We have had the same \$2,000,000.00 general liability club policy for the past five years. There have been no accidents nor claims against our group. Our agency is the Ries Insurance Agency (Telephone Number 513-984-5565).

Is the transportation by us of black powder as described above an activity regulated by the US DOT? What specific rules (sections) of 49CFR would be applicable to us? Does highway transportation across state lines affect regulation of our activity? Can we placard the motor vehicle with "Class 1" or "Dangerous" placards even if we are not regulated by US DOT?

If we are not regulated, we will still endeavor to comply with commercial transportation regulations for safety reasons and to reduce our liability.

Sincerely yours,



Robert R. Chaney, PE
5th Ohio Light Artillery, Ltd
870 Carpenter Road
Loveland, Ohio 45140
Tel: (513) 683-1627
E-mail: Robert.Chaney@UC.Edu

cc: Miami Township Police Department
Attn: Police Chief Steven Bailey
5900 McPicken Drive
Milford, Ohio 45150

Enc: