



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAY 21 1999

Ms. Carolyn Kossik
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Ref. No. 99-0088

Dear Ms. Kossik:

This is in response to your letter dated March 26, 1999, regarding clarification of the definition of "offeror" under the Hazardous Materials Regulations (HMR, 49 CFR Parts 171-180).

You provided the following scenario:

A company's receiving dock staff are unloading a third party transporter's truck. After a pallet of drums containing hazardous materials is removed, it is noticed that one of the containers is leaking. The receiver places the pallet back onto the truck, notifies the driver of the condition of the container, and refuses receipt of the pallet. If the driver decides to transport the leaking container, is the receiver now considered an "offeror" under the HMR?

As provided in § 171.1, the HMR apply to any person who transports or causes to be transported or shipped hazardous materials in interstate, intrastate, or foreign commerce, by highway, rail, air, and vessel. Any person who performs, attempts to perform or, under the circumstances involved, is contractually or otherwise responsible to perform, any of the functions of an "offeror" is responsible under the HMR for performance of those functions in compliance with the regulations. In many cases, more than one person may be responsible for performing "offeror" functions.

With regard to the particular circumstances described above, since the leaking pallet was refused by the consignee, it remains in possession of the carrier. Having refused receipt of the leaking pallet, the consignee or receiving dock staff have no responsibility to perform "offeror" functions in this case. However, the HMR forbids any carrier to transport hazardous materials for transportation in commerce



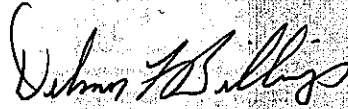
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which have not been prepared in compliance with the regulations. Therefore, packages of hazardous materials that are damaged or leaking may not be transported unless placed in a metal or plastic removable head salvage drum that is compatible with the lading and shipped for repackaging or disposal in accordance with the requirements in § 173.3(c). In addition, the packaging must be marked "SALVAGE" or "SALVAGE DRUM."

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,



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



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§ 173.22
99-0088

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March 26, 1999

Mr. Edward T. Mazzullo
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U.S. DOT/RSPA (DHM-10)
400 7th Street S.W.
Washington, D.C. 20590-0001

Subject: Request for Clarification on Definition of "Offerer"

Dear Mr. Mazzullo:

I am writing to request clarification on the definition of "Offerer", and how the Agency would apply the definition in a specific situation as described in the following paragraph.

A company's receiving dock staff are unloading a third party transporter's truck. After a pallet of drums (DOT hazardous materials) is removed, it is noticed that one of the containers is leaking. The receiver places the pallet back onto the truck, notifies the driver of the condition of the container, and refuses receipt of the pallet. If the driver decides to transport the leaking container, is the receiver now considered an "Offerer" per the laws and regulations?

We look forward to receiving your response on this definition.

Sincerely,

CH2M HILL

Carolyn Kossik

Carolyn Kossik
Project Engineer