



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

JAN 21 2000

Ms. Kimberly Henson
Corporate Compliance Manager
Great Western Chemical Company
808 Southwest Fifteenth Avenue
Portland, Oregon 97205

Ref. No. 99-0250

Dear Ms. Henson:

This is in response to your letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to customers who pick up hazardous materials at your facility using their own light-weight trucks.

You ask if these "will call" customers are subject to the HMR under the following scenarios:

SCENARIO 1: A customer picks up 1,050 pounds of 30% hydrogen peroxide and transports the material on public roads by private truck. He takes the material back to his house, where he dilutes it and uses it to oxygenate the irrigation water in his flower gardens.

SCENARIO 2: The next day, the same customer picks up 1,050 pounds of 30% hydrogen peroxide and transports the material on public roads using the same truck. However, this time he takes the material to his plant where he manufactures a specialty oxygenator for sale to area nurseries.

As specified in § 171.1, the HMR govern the transportation of hazardous materials in intrastate, interstate and foreign commerce. The term "in commerce" means in furtherance of a commercial enterprise. Accordingly, hazardous materials that are sold to customers for personal, non-commercial use and transported by such persons in their personal vehicles are not subject to the HMR. Therefore, under the first scenario, the customer is not subject to the HMR. Under the second scenario, the customer is subject to the HMR and, depending on circumstances, may require shipping papers, emergency response information and placarding of the transport vehicle.

171.1

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned below the word "Sincerely,".

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office Of Hazardous Materials Standards



GREAT WESTERN CHEMICAL Co.

CORPORATE HEADQUARTERS

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99-0250

August 27, 1999

RSPA
Office of Hazardous Materials Standards (DHM-10)
U.S. Department of Transportation
400 Seventh Street S.W.
Washington, DC 20590-0001

RE: Interpretation of 49 CFR 171.1

Great Western Chemical Company is a distributor of chemical products. A very small percentage of our business involves the sale of chemical products to businesses that pick up the products using their own pick-up trucks. To be on the safe side, we have required these "will-call" customers to comply with the HMRs if the customer will be transporting DOT hazardous materials. However, we have been challenged several times about the applicability of the HMRs to these types of customers. In your opinion, do the HMRs apply to the following scenarios:

1. A customer picks up 1,050 pounds of 30% hydrogen peroxide and transports the material on public roads by private truck. He takes the material back to his house, where he dilutes it and uses it to oxygenate the irrigation water in his flower gardens.
2. The next day, the same customer picks up 1,050 pounds of 30% hydrogen peroxide and transports the material on public roads using the same private truck. However, this time he takes the material to his plant where he manufactures a specialty oxygenator for sale to area nurseries.

Are these acts regulated under the HMRs? Please do not hesitate to call me at 1-800-547-1400, ext. 328 if you need any further clarification.

Sincerely,

Great Western Chemical Company

Kimberly Henson
Corporate Compliance Manager

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