



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

OCT 18 2000

Mr. Robert Fiederlein
City of Houston
Household Hazardous Waste
Management Program
11500 South Post Oak
Houston, TX 77035

Reference No. 00-0041

Dear Mr. Fiederlein:

This is in response to your letter and telephone conversations with me and a member of my staff concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to household hazardous waste management programs established by municipalities. These programs are established to collect household hazardous wastes, such as solvents, pesticides, etc., that are dropped off by citizens at a designated city-owned site. Your scenarios and questions are paraphrased and answered as follows:

Question 1: Through a contractual agreement with the municipality, a contractor assumes generator status and all responsibilities for the hazardous materials. As such, the contractor oversees collecting, packaging, and transporting the hazardous wastes to a disposal facility using its own vehicles and personnel. Under § 171.2(a), would the city be considered an offeror of the hazardous materials?

Answer: No. The contractor has consented by contractual agreement to perform all offeror and carrier functions and, therefore, assumes all responsibilities for ensuring that the hazardous waste shipments meet the requirements in the HMR.

Question 2: The municipality transports the hazardous wastes to another city-owned site to be packaged and transported later to a disposal facility, using municipal trucks and its own employees. Under § 171.2(b), would this be considered "in commerce" and subject to the HMR.

Answer: No. A state or local government entity that transports hazardous materials in vehicles operated by government personnel for non-commercial purposes is not a "person" for purposes of § 171.2 and, therefore, is not subject to the HMR. However, based on the definition of a "person" in § 171.8, if the purpose is commercial or if the government entity offers the hazardous material for transportation to a commercial carrier, then the HMR apply.

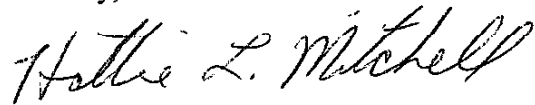


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I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the typed name.

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

Robert

ATTN:
ILENE
EDMONSON
9/3/00

City of Houston
HHW Mgt. Program

Fax

To: USDOT/RSPA/Ofc Haz Mat Safety **From:** Robert Fiederlein
Fax: 202.366.4012 **Pages:** 1
Phone: **Date:** 02/04/00
Re: Regulatory Interpretation **CC:**
 Urgent For Review Please Comment Please Reply Please Recycle

● **Comments:**

Dear Sirs:

Please assist us with an interpretation of the HMR with regards to two points:

- 49CFR171.2(a) states that "(N)o person may offer or accept a hazardous material for transportation in commerce...". Presently, many household hazardous waste management programs collect materials (waste solvents, pesticides, etc.) from citizens that are USDOT hazardous materials and package and ship these materials for proper disposal. Most cities do this utilizing a hazardous waste contractor who oversees the collection and transport of these materials on city property but who, through a contract with the city, has agreed to assume generator status and all responsibility for the hazardous materials. Question: Would the city be considered a person offering a hazardous material for transportation?
- 49CFR171.2(b) states that "(N)o person may transport a hazardous material in commerce...". Question: If a municipality were to collect household hazardous wastes (waste solvents, pesticides, etc.) from its citizens at one location within the municipality and transport that material in municipal trucks to another site within the municipality for later packing and transport for disposal, would that material be considered in commerce and hence be regulated by the HMR?

We appreciate your expeditious attention to this request. Any further information regarding this request may be obtained by calling me at 713.551.7353, between 8am and 5pm CST.

Robert Fiederlein/City of Houston HHW Mgt. Program/713.551.7353/fax713.726.7154