



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

APR - 5 2000

Mr. Leo Traverse  
HAZMATEAM, Inc.  
12 Kimball Hill Road  
Hudson, NH 03051

Ref. No. 00-0081

Dear Mr. Traverse:

This responds to your two letters, both dated January 19, 2000, concerning the transportation of hazardous waste under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask about the applicability of the HMR to the transportation of certain universal wastes, as defined by the Environmental Protection Agency (EPA). Your questions are paraphrased and answered below.

- Q1. Will universal waste mercury-containing devices or pesticides containing Chlordane® be subject to the HMR at the point where the transportation vehicle picks up the packages from a municipality for transportation to a recycling or disposal facility? Transportation will be by highway, vessel, or air.
- A1. As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in commerce. The phrase "in commerce" means in furtherance of a commercial enterprise. A state agency or local jurisdiction that transports hazardous materials for governmental purposes using its own personnel is not engaged in transportation in commerce and, therefore, is not subject to the HMR. However, if the state agency or local jurisdiction transports hazardous materials for a commercial purpose or offers a hazardous material for transportation to a commercial carrier, then the HMR apply.

You are correct that universal wastes generally are not regulated as hazardous wastes under the HMR because they are not subject to EPA's Hazardous Waste Manifest requirements. However, a universal waste that meets the definition of a specific hazard class or that is listed as a hazardous substance in Appendix A to § 172.101 is subject to the HMR. Thus, Chlordane® is subject to the HMR as a Class 3 (flammable liquid) material even when it is being offered for



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transportation or transported under exceptions provided in 40 CFR § 273.3 for a universal waste. Similarly, the mercury-containing devices are subject to requirements in the HMR as a hazardous substance if the amount of mercury contained in a package is one pound or more.

In the scenario you describe, if a municipality uses its own employees to transport Chlordane® or mercury-containing devices to a recycling or disposal facility, then the shipment is not subject to the HMR. However, if the municipality uses a commercial carrier to transport Chlordane® or mercury-containing devices, then the shipment is subject to the HMR.

- Q2. Will universal waste mercury-containing devices or pesticides containing Chlordane® be subject to the HMR at the point where the transportation vehicle picks up the packages from a manufacturing company or farm store for transportation to a recycling or disposal facility? Transportation will be by highway, vessel, or air.
- A2. See the answer to Question 1. If the Chlordane® or mercury-containing devices are transported from the manufacturing facility or farm store by employees of the municipality for governmental purposes -- as part of a government program for recycling and disposal, for example -- then the shipment is not subject to the HMR. However, if the shipment is transported by a commercial carrier, then it is subject to the HMR.
- Q3. Two containers of mercury devices are to be shipped from a municipality to a commercial recycling facility by a commercial carrier. Container 1 has 46 mercury switches, each containing 10 grams of mercury. Total net weight of mercury in Container 1 is 460 grams. Container 2 contains barometers, manometers, and similar equipment. The package weighs 50 lbs and the articles inside exceed 1 lb of mercury net capacity each. Although mercury is regulated under the HMR for water and air transportation only, mercury is a hazardous substance with a Reportable Quantity of 454 grams (1 lb). Is "RQ, mercury, 8, UN 2809, PG III" the appropriate shipping description for these containers?
- A3. Yes. Note, however, that the relevant entry in the Hazardous Materials Table in § 172.101 is "mercury *contained in manufactured articles*." As indicated by the letter "A" in Column 1, mercury contained in manufactured articles is subject to the HMR when transported by air. It is regulated for other modes of transportation only when it meets the definition of a hazardous substance or hazardous waste.
- Q4. Several boxes of universal wastes containing Chlordane® have been collected by a municipality. These containers are to be shipped to a commercial disposal facility by commercial carrier. Chlordane® is a pesticide with an oral LD 50 of 367 mg/kg and a flashpoint of 10°F (CC). Chlordane® is a hazardous substance with an RQ of 454 grams (1 lb). In addition, Chlordane®

is a marine pollutant. For highway and air shipments, is "RQ, pesticide, liquid, flammable, toxic, n.o.s., 3, 6.1, UN 3021, PG II (Chlordane®, 4,7-methano-1 H-indene-1,2,3,4,5,6,7,7a,8,8-octochloro-2,3,3a,4,7,7a-hexahydro-(cas9C1)" the appropriate shipping description? For vessel, is "RQ, pesticide, liquid, flammable, toxic, n.o.s., 3, 6.1, UN 3021, PG II (Chlordane®, 4,7-methano-1 H-indene-1,2,3,4,5,6,7,7a,8,8-octochloro-2,3,3a,4,7,7a-hexahydro-(cas9C1) (marine pollutant)" the appropriate shipping description?

A4. Yes.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,



Thomas G. Allan  
Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards



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Gorsky  
§ 171.1

(two letters)

Ref. No. 00-0081

1/19/00

Hattie L. Mitchel, Chief  
Exemptions and Regulations Terminations  
Office of Haz Mat Standards  
400 7th St. SW  
Washington, DC 20590

Dear Hattie:

I am currently serving on the New Hampshire Department of Environmental Services' Universal Waste Rule advisory committee. I have some questions in regards to when (or if) the DOT regulations would apply to certain Universal Wastes i.e., (mercury devices, thermostats, switches, thermometers, manometers, blood pressure devices). Please note that Universal Wastes are NOT hazardous wastes if handled according to State and Federal EPA guidelines.

As I understand the enclosed policy letters from DOT these transported materials are "not in commerce" and therefore, not controlled by DOT when the household owner or operator brings this material to the municipality or when one municipality transports to another municipality for the purpose of consolidation.

At some point, however, a commercial transportation vehicle will collect these "mercury containing devices" from the municipality for transportation to a recycling or disposal facility. Transportation will be by highway, vessel or air.

The following information is apparent for mercury.

According to the 172.101 table mercury is controlled only by water and air transportation.

According to Appendix A of the 172.101 table mercury is controlled as a hazardous substance at 454 grams or 1 lb.

Scenario:

Two containers of mercury devices are to be shipped from a municipality to a commercial recycling facility:

Container 1 has 46 mercury switches each containing 10 grams of mercury. Total net weight of mercury in the combination package is 460 grams or a little over 1 lb.

Container 2 has larger articles like barometers, manometers, etc. The combination package weighs 50 lbs and articles inside exceed 1 lb of mercury net capacity each.

Question #1 Will these Universal Waste mercury containing devices be controlled by DOT at the point where the transportation vehicle picks up the packages from a municipality for transportation to a mercury recycler? Transportation will be by highway, vessel or air.

Question # 2 Will these Universal Waste mercury containing devices be controlled by DOT at the point where the transportation vehicle picks up the packages from a manufacturing company for transportation to a mercury recycler? Transportation will be by highway, vessel or air.

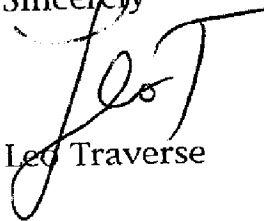
Question # 3 If DOT's answers to Questions # 1 or 2 are negative, I would like to propose the name "Mercury" "Not Restricted" on the combination packages for highway, air or vessel transportation to the subcommittee.

Question # 4 If DOT feels this material is controlled, I would like to propose the following shipping name to the Universal Waste Subcommittee for review.

Packages described above shipped by highway, air or vessel:

RQ, mercury, 8, UN2809, PG III (reference 172.101(b)(8)(i))

Sincerely



Leo Traverse



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Dear Hattie:

I am currently serving on the New Hampshire Department of Environmental Services' Universal Waste Rule advisory committee. I have some questions in regards to when (or if) the DOT regulations would apply to certain Universal Wastes i.e. (recalled pesticides). Please note that Universal Wastes are NOT hazardous wastes if handled according to State and Federal EPA guidelines.

As I understand the enclosed policy letters from DOT these materials are "not in commerce" and therefore not controlled by DOT when the household owner or operator brings this material to the municipality or when one municipality transports to another municipality for consolidation.

At some point a commercial transportation vehicle will collect recalled pesticides from the municipality for transportation to a disposal facility. Transportation will be by highway, vessel or air.

The following information is apparent for Chlordane®.  
Chlordane® is listed in the pesticide dictionary of the 1999 Farm Chemicals Handbook.

The oral LD 50 is 367mg/kg and therefore it is a minor danger poison. The flash point is 10°F (CC), therefore the material is also a flammable liquid. According to 173.2(a) the primary hazard is flammability PG II.

According to the 172.101 table Chlordane® is not listed as a technical name nor is a family name available. The end use name pesticides is available in the 172.101 table and furthermore column 1 indicates that pesticides meeting the defining classification criteria are controlled by all modes of transportation.

According to Appendix A of the 172.101 table Chlordane® is controlled as hazardous substance at 1 lb.



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