



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

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

FEB 23 2001

Ref. No. 00-0305

Mr. William S. Krimson
Supervisor, Transportation Oversight Unit
State of New Jersey
Department of Environmental Protection
P.O. Box 407
Trenton, NJ 08625

Dear Mr. Krimson:

This is in response to your October 24, 2000 letter questioning the timing of the application of placards to a trailer that is in the process of being loaded but contains a quantity of hazardous materials for which placarding is required.

The scenarios presented in your letter deal with the transportation of hazardous wastes in non-bulk packagings and the transfer of these packages between vehicles at a facility and from the facility into vehicles. Specifically, you ask at what point the transport vehicle must be placarded, i.e., when the minimum placardable quantity of hazardous materials is exceeded or when the transport vehicle is fully loaded at the transfer facility.

It is the opinion of this Office that the transport vehicle must be placarded at the time of movement of the vehicle. A shipper or carrier cannot reasonably be expected to determine the appropriate placards that must be displayed on a transport vehicle until the loading or unloading process is completed. It is also not practical for a carrier to constantly change placards on a transport vehicle as different hazardous materials are loaded onto or unloaded from the transport vehicle. The "offering" for transportation referred to in 49 CFR 172.506(a) does not occur until the loading is completed. Similarly, until the loading is completed, the motor carrier has not begun "transporting" the hazardous materials within the meaning of Section 172.506(a)(1).

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,

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



000305



State of New Jersey

Department of Environmental Protection

Waste Compliance & Enforcement & Release Prevention
Bureau of Hazardous Waste Compliance & Enforcement
Transportation Oversight Unit

P.O. Box 407
Trenton, NJ 08625
Tel. (609) 584-4250
Fax. (609) 588-2444

Christine Todd Whitman
Governor

Billings
8 172.506(a)1
Placarding
Robert C. Shinn, Jr.
Commissioner
00-0305

October 24, 2000

Mr. Edward Mazzullo, Director
U.S. Department of Transportation
Office of Hazardous Materials Standards
400 Seventh Street, SW, Suite 8321
Washington, DC 20590

Ref: Placarding Responsibilities At Transfer Facilities

Dear Mr. Mazzullo:

I am seeking a determination of the applicability of the placarding requirements at 172.506 (a) 1. In question is the timing of the application of placards to a trailer which is partially loaded but beyond the quantities necessary for Table II material.

In this scenario Company A, a for-hire carrier, transports placarded loads of non-bulk hazardous waste to Company B's transfer facility, also a for-hire carrier. This material is off loaded to a loading dock or into a fixed building by Company A's driver who then departs the facility having had the hazardous waste manifest signed by Company B who becomes transporter number two in accordance with 40 CFR 263.20 (d) 1.

Company B, at some point, places the hazardous waste from the loading dock into one of their empty trailers along with other packages that are arriving throughout the day from numerous other shipments by their own vehicles or by other carriers. Some material is loaded truck-to-truck; other material is loaded from a fixed storage building. It is my understanding of 177.506 (a) 1, that at the point where a placardable quantity of any Table II material is placed into the empty trailer, placards must be immediately affixed for that material. I reason that since the material is in transit, placarding applies.

Company B, having been cited by this agency for failing to placard the vehicle, argues that since a full load had not yet been placed aboard the trailer and the doors were not closed, placarding determinations could not have been made. Furthermore, they argue that the load had not yet been "offered"; therefore, placards need not be offered to the carrier, (themselves).

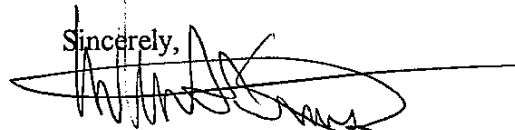
It is my opinion that since the material was in storage incidental to transportation, placarding is required immediately upon the placement of an amount in excess of 1000 pounds of any Table II material and upon the placement of any amount of Table I material into the unplacarded trailer. I maintain that Company B is not the "offerrer" of the material and is responsible for placarding since the material is now in their vehicle.

Two other carriers are involved in a variation of this issue. In this case, Company A delivers placarded loads to Company B's trailer with Company A's driver placing the waste into Company B's trailers. The manifests are left with Company B, who does not sign as transporter number 2 until several days have passed and a full load is built. Notwithstanding the violation against Company A for failing to obtain Company B's date and signature on the manifests (172.205 (d) 1 & 40CFR 263.20 (d) 1), I maintain that Company B is responsible for placarding their trailer despite their not having taken possession of the waste by not signing the manifest and despite using Company A's drivers to load their trailer.

Since New Jersey has twenty-six hazardous waste transfer facilities in operation throughout the state, we are interesting in applying these requirements in a fair and consistent manner. As these enforcement actions are pending administrative hearings, please evaluate these scenarios and advise us as soon as possible if we are applying these rules properly.

Should you require additional details please don't hesitate to contact me at (609) 588-3158 or e-mail me at bkrimson@dep.state.nj.

Sincerely,

A handwritten signature in black ink, appearing to read 'William S. Krimson', is written over a horizontal line. The signature is stylized and somewhat cursive.

William S. Krimson, Supervisor
Transportation Oversight Unit