



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

SEP 20 2001

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

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

Ref. No. 01-0172

Dear Mr. Krimson:

This is in response to your June 29, 2001 letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you are requesting that RSPA reconsider the February 23, 2001 letter of clarification issued by this office regarding the placarding requirements at transfer facilities.

As specified in § 171.1, the HMR govern the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The HMR do not specify when placards must be applied to or removed from a motor vehicle. However, under § 172.506(a), each person offering a motor carrier a hazardous material for transportation shall provide to the motor carrier the required placards for the material being offered prior to or at the same time the material is offered for transportation. In addition, no motor carrier may transport a hazardous material in a motor vehicle, unless the placards required for the hazardous material are affixed thereto. At any time prior to the vehicle entering onto a road accessible by the public, the offeror has the opportunity to offer the required placards and the carrier has the opportunity to apply them. The HMR do not require that a trailer being loaded at a facility be placarded as soon as the threshold for placarding is reached.

You should also be aware that the Occupational Safety and Health Administration (OSHA) of the Department of Labor under 29 CFR 1910.1201 requires any employer who receives a package, freight container, rail freight car, motor vehicle or transport vehicle of hazardous material which is required to be marked, labeled or placarded in accordance with the HMR to retain those markings, labels and placards on the package, container or vehicle until the hazardous material is sufficiently removed to prevent any potential hazard. Therefore, under the OSHA requirements a trailer which is received at a facility containing a quantity of hazmat which requires placards must continue to display placards as long as there is a placardable quantity in it.



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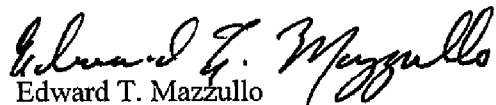
172.506

On June 14, 2001, RSPA published a notice of proposed rulemaking (NPRM) on the applicability of the HMR to loading, unloading, and storage of hazardous materials (66 FR 32420; HM-223). We are proposing to clarify the applicability of the HMR functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The HM-223 rulemaking has four overall goals. First, we want to maintain nationally uniform standards applicable to functions performed in advance of transportation to prepare hazardous materials for transportation. Second, we want to maintain nationally uniform standards applicable to transportation functions. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities within which HMR-regulated functions are performed may also be subject to federal, state, or local regulations governing occupational safety and health or environmental protection.

To this end, I encourage you to submit written comments on the NPRM. You can submit and review comments on-line at the DOT Dockets Management System web site at "<http://dms.dot.gov/>." The comment period closes November 30, 2001; we will consider late-filed comments to the extent possible as we develop a final rule.

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

Sincerely,


Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards



State of New Jersey

Department of Environmental Protection

Waste Compliance and Enforcement
And Release Prevention

Betts
§ 172.506
Placarding
01-0172

DONALD T. DiFRANCESCO
Acting Governor

Robert C. Shinn, Jr.
Commissioner

June 29, 2001

Robert McGuire, Associate Administrator
Research and Special Programs Administration
Office of Hazardous Materials Safety
400 Seventh Street, SW, Suite 8321
Washington, DC 20590

Ref: Placarding Responsibilities at Transfer Facilities

Dear Sir:

I am asking for re-consideration of the enclosed February 23, 2001 interpretation issued by the Office of Hazardous Materials Standards.

Mr. Allan's response to the scenarios posed by Supervisor Krimson in his October 24, 2000 letter creates the potential for a serious transportation hazard regarding the interlining of hazardous waste cargo. The New Jersey Department of Environmental Protection routinely monitors twenty-six ten-day hazardous waste transfer facilities located in New Jersey. Some of these facilities are merely parking lots which are unmanned after normal business hours with at best, an on site portable office trailer. As I understand Mr. Allan's response, because the hazardous waste in our scenario is not "offered" for transportation until loading is complete, placarding is not required.

The hazardous materials transportation regulations and federal EPA regulations allow the bulk commingling of different hazardous wastes (materials) while in transit at such ten-day transfer facilities. If I extrapolate RSPA's thinking and apply it to bulk transportation, we are faced with partially loaded cargo tanks being parked for numerous days and since they are not yet "loaded" as defined by Mr. Allan's letter, they need not be placarded. This situation exists in the waste industry where smaller trucks relay loads into larger trucks thereby saving transportation costs.

RSPA's decision that placarding is not required on vehicles containing non-bulk packages of hazardous waste and seemingly bulk shipments of hazardous materials in-transit, seems to be contrary to RSPA's purpose of fostering the safe transportation of hazardous materials. This interpretation is inconsistent with earlier interpretations issued by RSPA as to when transportation begins and whether or not State specific regulations apply to ten-day transfer facilities, some of which have been preempted in the past. From Mr. Allan's letter it would appear that the waste has reached its intended destination and therefore is not subject to DOT regulation until re-loading has

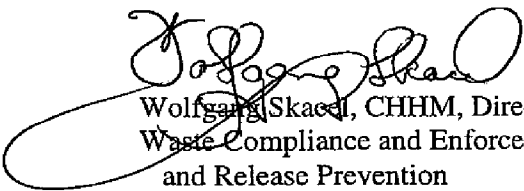
been completed. Please consider the fireman or emergency response individual responding to a fire involving one of these waste laden vehicles, (something that is not uncommon in the waste transportation industry). These individuals arrive to find smoke coming from a trailer or cargo tanker but have no indication as to what is aboard nor personnel available to question concerning its contents. Since these loads may take days to be built, partial truckloads of hazardous waste are parked about these facilities on a continuous basis.

This is the situation we are currently facing if this matter is not reversed. We are not insisting that placards be changed every time the load changes as Mr. Allan has suggested. It is reasonable, however, to require that placards be affixed to in-transit vehicles when there is no carrier representative on site. I also disagree that 49 CFR 172.506(a)(1) applies to carriers in-as-much-as a carrier is not the offerer of the hazardous materials in question. A carrier does not re-offer hazardous waste under any of the scenarios presented herein or in Supervisor Krimson's initial letter and therefore cannot, and should not, assume the role of the shipper/offerer.

This issue is a perfect example of why states must have purview over activities at "storage incidental to transpiration" facilities. It also points out how the HMR are not designed to deal with storage or repackaging issues. I urge you to reconsider that it is not unreasonable, as RSPA has stated, to require that vehicles containing hazardous materials be placarded while they are in storage in transit. The New Jersey Department of Environmental Protection is anxious to comment on the pending Notice of Proposed Rule Making for HM-223.

If you require any additional information please contact Supervisor William Krimson at (609) 588-3158 or myself at (609) 292-6704.

Sincerely,



Wolfgang Skacel, CHHM, Director
Waste Compliance and Enforcement
and Release Prevention

Encl.



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

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

FEB 23 2001

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



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

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

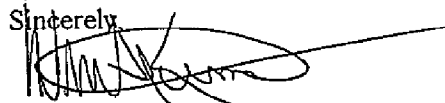
It is my opinion that since the material was in storage incidental to transportation, placarding is required immediately upon the placement of an amount in excess of 1000 pounds of any Table II material and upon the placement of any amount of Table I material into the unplacarded trailer. I maintain 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



William S. Krimson, Supervisor
Transportation Oversight Unit