



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

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

SEP 11 2003

Mr. Ted Nebrich
Waste Technology Services, Inc.
640 Park Place
Niagara Falls, New York 14301

Ref. No. 03-0118

Dear Mr. Nebrich:

This is in response to your letter dated May 6, 2003 regarding the applicability of the security requirements under Part 172, Subpart I of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if environmental consultants who prepare shipping papers for their clients must create a security plan and if so can a single security plan be used for more than one client site.

Security plans apply to each person who offers for transportation in commerce or transports in commerce a hazardous material listed in paragraph (b)(1) - (7) of § 172.800. The term "offeror" is not defined in the HMR; however, generally a person who performs one or more functions of an offeror is considered an offeror for HMR purposes. Offeror functions are functions performed to prepare a shipment for transportation (i.e., selection of a proper shipping name, preparation of shipping papers, marking or labeling a package, etc.). Therefore, by creating shipping papers for your clients you are an offeror and when dealing with materials in a quantity provided in § 172.800(b)(1) - (7) you must develop and adhere to a security plan.

A security plan should cover the activities undertaken by an offeror to prepare shipments for transportation and should consider the nature of those activities. We do not expect shippers or carriers to develop security plans for activities that they do not perform or for materials to which they do not have access. A person who performs certain offeror functions, for example, but does not actually have access to the hazmat to which the function applies need not address unauthorized access issues in his security plan. Similarly, a person who performs certain offeror functions, but is not involved with decisions concerning the actual transportation of the hazardous material need not address en route security issues in the security plan. The security plan requirement is flexible, permitting shippers and carriers to adapt security plan requirements to their specific circumstances. If the offeror functions you perform include only preparation of shipping papers, then your security plan should cover that function to the extent necessary. For example, if you prepare shipping papers, but do not have access to sensitive shipping information, such as shipping dates and routes, then your security plan may be minimal. However, if in the course of preparing shipping papers, you have access to information



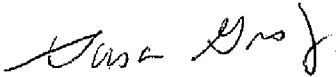
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172.800

related to the security of the shipment during transportation, then you must have a security plan to address those security issues. Provided the security plan fulfills the requirements of § 172.802, you may utilize the same or a similar security plan for different shipments.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Gorsky".

Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards



WASTE TECHNOLOGY SERVICES INC.

Gale
\$172,800
Security Plans
- 03-0118

May 6, 2003

Mr. Edward Mazzullo
Director of Office of Hazardous Material Standards
US Department of Transportation - RSPA (DHM - 10)
400 Seventh Street, S.W.
Washington, DC 20590-0001

Dear Mr. Mazzullo:

I am writing to request an interpretation regarding the applicability of the security requirements (i.e., security plans) for offerors of hazardous materials as it pertains to environmental consultants such as us. The March 25, 2003 Federal Register (68 FR 14510) discusses the development and implementation of security plans for shippers and carriers of certain hazardous materials. It also addresses the training requirements for hazmat employees of companies required to have a security plan. According to the preamble, the trigger for applicability is the registration requirements in 49 CFR part 107 or being an offeror or transporter of selected agents and toxins regulated by the CDC. However, the new codified 49 CFR Part 172, Subpart I - Security Plans' *only* trigger for applicability is ...*each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials...* There is no mention of the 49 CFR 107 registration criteria. We are strictly *environmental consultants*** and register only because the Instructions & Form DOT F 5800.2 indicates an offeror is a person, among other things, prepares shipping papers and determines the hazard class of a hazardous material. Since we do not perform a majority of the functions outlined in the Form DOT F 5000.2 as offerors and we clearly are not the shipper of hazardous materials, are we required under the new 49 CFR Part 172, Subpart I to develop a security plan? You can see our dilemma. Are we required to develop a security plan for each one of our client's sites we are involved with? In some cases we have not even seen their site; we only prepare shipping papers for them.

*** Our primary and in most instances our only function includes preparing shipping papers (including designating DOT shipping names and hazard classes) and arranging for hazardous materials pickups. There are some instances where we may supervise the transfer of hazardous material to a carrier.*

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Mr. Edward Mazzullo
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*Already
in memo?*

Also we would appreciate your interpretation on whether or not we would be required to continue our registration based on the type of service we provide for our clients. If we do not fit the criteria of an offeror regarding the Hazardous Materials Certificate of Registration program, the security plan requirements become a moot point I would guess.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,
WASTE TECHNOLOGY SERVICES, INC.



T.L. Nebrich, Jr., CHMM, QEP, REM
Technical Director

TLN/tln