



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

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

FEB 27 2004

Ms. Anita S. Knight
Ondeo Nalco Company
Ondeo Nalco Center
Naperville, IL 60563-1198

Ref. No. 03-0172

Dear Ms. Knight:

This is in response to your letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to hazardous materials being transported on both public and private roads. Specifically, you ask whether your hazardous material shipments are considered non-commercial and whether they are subject to the HMR. You reference a letter from this office to Ms. Karen Van Dusen of the University of Washington dated September 2, 1997 and state that your scenario is similar.

As stated in the September 2, 1997 letter, a state agency (such as a state university) that transports hazardous materials for its own use, using its own personnel and vehicles, is not engaged in transportation in commerce and, therefore, is not subject to the HMR. "In commerce" means in furtherance of a commercial enterprise. You state that Ondeo Nalco employees transport Class 3 or Class 8 chemical products to customers at various university locations. Ondeo Nalco is a company engaged in transportation in commerce and is, therefore, subject to the HMR. With regard to your statement that the hazardous materials are transported on both public and private roads, as stated in the September 2, 1997 letter, the transportation of hazardous materials must be entirely on private roads with restricted public access to be excepted from the HMR.

I hope this information is helpful.

Sincerely,

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



030172

171.1



McIntyre
§ 171.1
Applicability
03-0172

July 11, 2003

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/RSPA (Attention DHM-10)
400 7th Street S.W.
Washington, D.C. 20590-0001
Fax = 202-366-3012

Subject: Applicability of 49 CFR Parts 171-180

ONDEO Nalco Company
Ondeo Nalco Center
Naperville, IL 60563-1198

Tel: 630-305-1000
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Dear Mr. Mazzullo:

We read with interest a letter to the University of Washington, dated September 2, 1997, from Delmer Billings. We have a similar situation at one of our customer sites (also a university campus), which I can describe in detail as follows. Does this situation qualify as "non-commercial"? Please confirm what our requirements are under the HMR. Would the requirements be similar for other types of "campuses", i.e. school or manufacturing plant?

1. Two small Dodge pick-up trucks are used by Ondeo Nalco District Service Specialists. The trucks are used for a "Full Service" arrangement which includes routine testing, etc., including occasional transport of chemical product to specific university campus locations after they have been delivered by common carrier to one of four campus delivery locations.
2. MSDS books are maintained for each truck and kept in cab of truck. Products are hazardous materials in class 3 or 8.
3. Container types include 55 gal, 15 gal and 5 gallon. The maximum quantity in the truck at any one time would be one drum, with a total weight of 135 gallons or approximately 1125 pounds.
4. Chemicals are not transported other than within the vicinity of the campuses being serviced which may be a 5 to 6 mile radius. The four usual delivery areas used by common carriers when our products are initially delivered to the customer are centralized for each of the four campuses. This helps minimize the distance of transport.
5. The roads traveled are mostly private campus roads but on one side of the campus there is a mix of public and private. Most roads are that which have only one lane in each direction, but there are a couple with 2 lanes in each direction.

Thank you for your prompt response.

Yours truly,

Anita S. Knight
Corporate Product Registration Specialist
Environment, Health & Safety Department
630-305-1080

SVEZ