



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

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Washington, D.C. 20590

JAN - 4 2005

Mr. Michael S. Budelmann
BAUER MOYNIHAN & JOHNSON, LLP
2101 Fourth Avenue, Suite 2400
Seattle, Washington 98121

Ref. No.: 04-0138


Dear Mr. Budelmann:

This responds to your e-mail requesting clarification of the requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), including registration and training, as they apply to a tug company that provides both a tug and a barge as well as towage services under time charter to a shipper that performs all of the loading, handling, and discharging of cargo.

Under the circumstances you describe, the tug company would not be subject to the HMR except to the extent set forth in 49 CFR 176.5(b)(6). That section indicates that the owner/operator of the tug or towing vessel must only make such provisions to guard against and extinguish fire as the Coast Guard may prescribe and do so only when towing another vessel having Class 1 (explosive) materials, Class 3 (flammable liquids), or Division 2.1 (flammable gas) materials. Also, it is important to note that the HMR pertain only to the transport of hazardous materials in packaged form, including bulk packagings. As set forth in 49 CFR 176.5(d), the HMR do not apply in any respect to transport in bulk, such as by a tank barge or a hopper barge carrying cargo in bulk without any other form of packaging.

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

Sincerely,



John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



040138

176.5 (b)(6)

INFOCNTR

From: Mike Budelmann [MSBUDELMANN@BMJLAW.COM]
Sent: Friday, May 21, 2004 12:10 PM
To: INFOCNTR
Subject: Request for clarification

Engrum
§ 176.5(b)(6)
Vessel
04-0138

Follow Up Flag: Follow up
Flag Status: Flagged

We are a maritime law firm in Seattle, Washington desirous of clarification on the scope of the requirements for HAZMAT registration, training, etc.

It is our understanding that 46 CFR 176.5(b)(6) provides a general exemption from the HMR applicable to tugs and tug crewmembers. Would you confirm that this exemption would remain applicable when the tug company provides both a tug and barge under a time charter arrangement. In towage, the tug owner provides the tug and the shipper/customer provides the barge; in a time charter, however, the tug company would provide both a tug and barge. Although a distinction lies with respect to ownership of the barge, in either situation the tug company's services are limited to towage of an unmanned barge and do not involve cargo loading, handling or discharging.

Please confirm that a tug owner who provides a tug as well as a barge and towage services for its shipper/customer is not subject to registration, training, etc. (so long as the shipper performs all loading, handling and discharging of the cargo).

Thanks very much.

Regards,

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