



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

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

AUG 10 2004

Ms. Saskia Mooney
Manager
Howrey Simon Arnold & White, LLP
1299 Pennsylvania Ave, NW
Washington, DC 20004

Ref No.: 04-0173

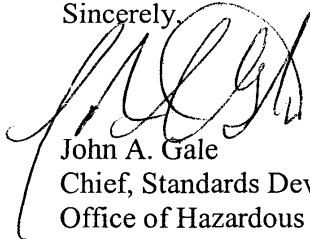
Dear Ms. Mooney:

This is in response to your letter dated July 29, 2004 requesting clarification of the wet battery exception found in § 173.159(e) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if § 173.159(e) requires the driver of the transport vehicle to be an employee of the shipper.

Shipments of electric storage batteries are excepted from the HMR if the provisions found in § 173.159(e)(1)-(4) are met. The exception in § 173.159(e) is not contingent upon the driver of the transport vehicle being employed by the shipper. Thus, a shipper may utilize the exception even if the driver of the transport vehicle is not employed by the shipper.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



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



040173

173.159(e)

CAP ANALYSIS

Supko
§ 173.159(e)
Batteries
04-0173

Saskia Mooney
Manager
DIRECT: 202-383-7350
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July 29, 2004

Mr. Edward Mazzullo
Director of Hazardous Materials Standards
Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Re: Request for Interpretation on Shipping Lead Batteries Pursuant to
49 CFR § 173.159(e) Exception

Dear Mr. Mazzullo:

I am writing on behalf of Battery Council International (BCI) with a question regarding the provisions for shipping lead batteries pursuant to the exception contained in 49 CFR § 173.159(e) of the U.S. hazardous material regulations (HMR).

BCI is a non-profit trade association representing commercial entities involved in the manufacture, distribution, sale and reclamation of lead acid batteries around the world. BCI's members and associate members include manufacturers and distributors of lead acid storage batteries for automotive, marine, industrial, stationary, specialty, consumer and commercial uses, and secondary lead smelters that reclaim or recycle the batteries once they are spent. Additional information on BCI and its members can be found at www.batteryCouncil.org.

Many BCI members offer and transport their products pursuant to the exception found at 49 CFR § 173.159(e) of the HMR. This provision in the HMR states that:

(e) Electric storage batteries containing electrolyte or corrosive battery fluid are not subject to the requirements of this subchapter for transportation by highway or rail if all of the following requirements are met:

(1) No other hazardous materials may be transported in the same vehicle;

(2) The batteries must be loaded or braced so as to prevent damage and short circuits in transit;

(3) Any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries; and

(4) The transport vehicle may not carry material shipped by any person other than the shipper of the batteries.

As you know, if a shipper or carrier complies with all the requirements of 49 CFR 173.159(e), a consignment of batteries does not require markings, placards, shipping papers, or a Class 8 corrosive label. Unfortunately, BCI members frequently have problems with how State transportation enforcement authorities in the field interpret the exception contained at 49 CFR § 173.159(e). Recently, several BCI members were issued citations by State authorities for what they assert were violations under 49 CFR § 173.159(e)(4). These State transportation enforcement authorities assert that if the driver of a truck laded with lead batteries is not an employee of the shipper of record, the batteries cannot be shipped under the exception in 49 CFR § 173.159(e). This clearly appears to be a misinterpretation of the HMR. Therefore, I writing to request that you provide an answer to the following question:

In order for a shipper or carrier to offer or transport lead batteries under the exception contained at 49 CFR § 173.159(e), must the driver of the transport vehicle delivering the batteries also be an employee of the shipper?

I would appreciate if your office could expedite this request for interpretation since the company that was issued a citation has a hearing on this matter in September. Please contact me at 202-383-7350 if you have any questions.

Thank you.

Sincerely,



Saskia Mooney