



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

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

OCT 26 2004

Mr. Walter J. Pociask  
21833 Knudsen Drive  
Grosse Ile, MI 48138-1320

Ref. No.: 04-0218

Dear Mr. Pociask:

This is in response to your September 2, 2004 letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if your lab packs are under the sole jurisdiction of the HMR when hazmat employees start filling hazardous materials packagings (i.e., performing pre-transportation functions).

On October 30, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket HM-223 entitled "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." The HM-223 final rule clarifies the applicability of the HMR to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The final rule codifies in the HMR long-standing policies and interpretations concerning the applicability of the regulations to specific functions and operations. We initiated the rulemaking to better define the applicability of the HMR to loading, unloading, and storage operations at fixed facilities and to clarify the relationships among Federal, State, local, and tribal agencies involved in the regulation of hazardous materials. To this end, the final rule discusses the relationship of the HMR to worker protection regulations promulgated by the Occupational Safety and Health Administration (OSHA) and environmental protection regulations issued by the Environmental Protection Agency (EPA). In addition, the final rule discusses preemption provisions contained in the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.).

As explained in the HM-223 final rule, pre-transportation functions are functions performed to prepare a hazardous material for transportation in commerce. Pre-transportation functions include activities such as determining a material's



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171.1  
171.8

hazard class; selecting a packaging; filling and closing a packaging; marking and labeling a package; preparing shipping papers and emergency response information; and selecting and affixing placards.

The Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. Facilities at which pre-transportation functions are performed, therefore, may be subject to EPA regulations governing risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasures. Concerning your specific question, a facility that performs both hazardous waste management functions and pre-transportation functions must ensure that the functions subject to regulation under the HMR are performed in accordance with the HMR and must also ensure compliance with applicable EPA requirements addressing the environmental concerns associated with the hazardous waste management functions at the facility. Specific questions concerning the applicability of EPA hazardous waste management regulations to your facility, including questions concerning long-term storage permits and satellite accumulation areas, should be directed to the appropriate EPA office.

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

Sincerely,



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

September 2, 2004

Mr. Edward Mazzullo, Director  
Office of Hazardous Materials Standards  
USDOT/RSPA (DHM-10)  
400 7<sup>th</sup> Street SW  
Washington, DC 20590-0001

Pollack  
§ 171.1  
§ 171.8  
Definitions  
04-02-18

Dear Mr. Mazzullo:

I was given your name and address by Cameron, in your office. The purpose of my letter is to request a specific interpretation of the *pre-transportation* definition. Pre-transportation, as I read the text, describes the functions which persons perform when they are lab-packing hazardous materials, immediately prior to actually loading of hazardous materials on a vehicle, for the purpose of shipping them off-site for disposal. The term of *pre-transportation*, as I understand it, would be one of the very first steps of *transportation in commerce*, if I understand the proposed regulation correctly.

Our company tries very hard to handle wastes in a 100% legal manner, fully in compliance with all Federal and State regulations promulgated by OSHA, EPA, DOT, and all of their corresponding State agencies. While reading the text regarding the concept of pre-transportation, we noted that this regulation would pre-empt federal and state regulations that may be in conflict. We certainly do not wish to proceed without full clarification of this term "pre-transportation". We see an area of difficulty, where the EPA waste storage accumulation "clock" ends, and DOT pre-transportation starts.

Our Company utilizes hazardous materials of several different types. These materials are usually laboratory chemicals, and are typically in original container sizes of a few ounces to 55 gallons in size. These chemicals are used for

chemical experiments. When the chemicals are combined for experimental purposes, they are usually not of any further use, and we must dispose of them. Furthermore, on occasion, even partially full containers of unused chemicals need to be discarded.

Under the Federal EPA guidelines, and mirrored in State of Michigan guidelines, we have a set period of time to store these materials (90 days) without needing long-term- storage permits. Another aspect of the EPA regulations states that we are allowed to accumulate up to 55 gallons in a "satellite accumulation area" before we are obligated to dispose of these materials. When we lab-pack waste chemicals in order to dispose of them, we gather up the chemicals from several of these satellite accumulation areas, into a single location, where we would then proceed with consolidating these smaller containers into several different 55-gallon containers, dependent upon their DOT classifications. We see that, as soon as we begin to consolidate these chemicals into the second 55-gallon drum, we are "technically" in violation of the EPA regulation, *unless we are already under the sole jurisdiction of DOT at this point.* If we are regulated solely by the DOT regulations at the point that we commenced lab-packing, then we would not be in violation of this EPA satellite accumulation rule, because the EPA storage rule would already have been pre-empted. At that precise point, the EPA storage clock stops, and the DOT pre-transportation function, would apply. Frankly, this makes sense to me. I hope that you agree with this logic. I am ready to further clarify my situation if necessary. Thank you, in advance, for any assistance you can provide.



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