



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

Office of
Chief Counsel

1200 New Jersey Avenue, S.E.
Zone E26 (PHC-10)
Washington, D.C. 20590-0001
Phone: (202) 366-7166
Fax: (202) 366-7041
E-mail: meredith.kelsch@dot.gov

***Hazardous Materials Safety
Law Division***

December 20, 2011

Mr. Joe Torsani
NASA Pressure Systems Manager
Mail Stop: SA-G2
John F. Kennedy Space Center, FL 32899

Dear Mr. Torsani:

This letter is in response to your request for interpretation submitted in August 2011. You ask for clarification of whether, under the provisions of 49 C.F.R. § 171.1(d)(4), the Kennedy Space Center (KSC) and Cape Canaveral Air Force Station (CCAFS) are subject to the requirements of the Hazardous Materials Regulations (HMR) when moving hazardous materials exclusively within the boundaries of these facilities.

Under 49 C.F.R. § 171.1(d)(4), rail or motor vehicle movements of hazardous materials occurring exclusively within the boundaries of a contiguous facility where public access is restricted are not subject to the requirements of the HMR. If such movement crosses an area that is publicly-accessible, access to that area must be restricted by the use of signals, lights, gates, or similar controls.

Your letter indicates that KSC and CCAFS are contiguous facilities and that hazardous materials are moved within the boundaries of the property using two common roadways. These facilities restrict access through fencing, security-guarded gates at all entrances, controlled-access waterways, as well as patrolling helicopters, airboats in inland waterways, and roving patrols near the Atlantic Ocean. However, public access to these facilities is not entirely restricted. You state that public entry is prohibited on the grounds with the exception of daily bus tours between 10:00 a.m. and 5:00 p.m., a childcare center open between 6:00 a.m. and 6:00 p.m. for children of employees, and periodic special events in which family/friends of employees are permitted on the premises.

Since public access to KSC and CCAFS is not entirely restricted, additional steps are necessary to limit public access to areas where hazardous materials are moving within the facilities. One option, as your letter suggests, is to move hazardous materials between the hours of 7:00 p.m. and 5:00 a.m., when there is no public access to the grounds. Alternatively, KSC and CCAFS could restrict access to the areas where hazardous materials are moving between 5:00 a.m. and 7:00 p.m. through the use of fencing, security personnel, or other means of preventing public contact.

If these added precautions are taken to prevent public access to the areas of hazardous materials movement within the boundaries of the property, then the requirements of the HMR would not apply, pursuant to 49 C.F.R. § 171.1(d)(4).

Alternatively, if a government employee moves the hazardous materials “solely for noncommercial...government purposes,” the movement is not subject to the requirements of the HMR under 49 C.F.R. § 171.1(d)(5).

Responses to your specific questions are as follows:

(1) Does the fact that visitors pay a fee to a NASA-contracted concessionaire for an escorted tour of the facility constitute a “business-related reason to be on the facility,” as referenced in PHMSA Interpretation Reference No. 08-0057, dated August 18, 2008?

Section 171.1(d)(4) provides that “public access” must be restricted. In order to determine whether “public access” to an area exists, you must consider all relevant factors and not solely whether there is a business-reason for being on the premises. Based on your description, the grounds are publicly accessible to bus tours, children attending on-site daycare, and family/friends attending special events. These activities qualify as “public access” based on numerous relevant considerations, including that the individuals are not employees at KSC or CCAFS, they have no role in the regular operations of the facilities, they have no part in the movement of hazardous materials, the grounds are readily open to them during certain hours, and they are on the premises for purely recreational or educational purposes. Therefore, KSC and CCAFS must limit these individuals from accessing areas where hazardous materials are moving in order to fall under 49 C.F.R. § 171.1(d)(4).

(2) Considering the facts above, does 49 C.F.R. § 171.1(d)(4) exempt KSC and CCAFS from the HMR?

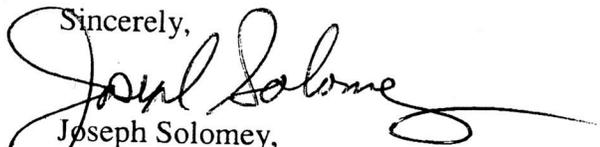
As discussed above, KSC and CCAFS are not subject to the requirements of the HMR, under 49 C.F.R. § 171.1(d)(4), if steps are taken to restrict public access to the areas where hazardous materials are moving within these facilities. Based on the information you provided, public access to the facilities is entirely restricted between 7:00 p.m. and 5:00 a.m.; therefore, movement during those hours is not subject to the HMR. Similarly, the HMR does not apply if public access to the areas of movement is restricted through the use of fences, security, or other means during business hours when there is public access to the facilities.

(3) If the answer to Question 2 is "No," is it possible to invoke the exemption for compressed gas trailer movements within the contiguous facility boundaries during the hours of where no members of the general public should be on KSC and CCAFS (e.g., 1900 to 0500)?

Yes; as discussed above, the requirements of the HMR do not apply when hazardous materials are moved within the boundaries of these facilities during periods when public access is restricted from the areas of movement. Therefore, KSC and CCAFS may move hazardous materials within the contiguous facilities when the public is excluded from the grounds between 7:00 p.m. and 5:00 a.m. or if the public is barred from the area of movement during business hours.

If you require additional clarification or assistance, please do not hesitate to submit further inquiries.

Sincerely,

A handwritten signature in black ink that reads "Joseph Solomey". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Joseph Solomey,
Assistance Chief Counsel for
Hazardous Materials Safety