



U.S. Department
of Transportation

Research and
Special Programs
Administration

Office of the
Chief Counsel

400 Seventh St. S W
Washington D C 20590

APR 19 1994

Sandra Goldberg, Esquire
Deputy Attorney General
California Department of Justice
2101 Webster Street, 12th Floor
Oakland, CA 94612

Dear Ms. Goldberg:

Thank you for your letter to Neil Eisner, Department of Transportation (DOT) Assistant General Counsel for Regulations and Enforcement, inquiring as to the jurisdiction of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. §§ 1801 et seq., and its implementing regulations, 49 C.F.R. Parts 171-180. Specifically, you asked whether these regulations apply to the transportation of hazardous waste on roads solely within the boundaries of a suburban university campus, where the roads are privately owned by the university but open to use by the general public. Mr. Eisner has referred your letter to the Research and Special Programs Administration (RSPA), the agency within DOT responsible for implementing the HMTA.

Hazardous waste designated by the U.S. Environmental Protection Agency is a hazardous material subject to regulation under the HMTA. 49 C.F.R. § 173.140(b). The jurisdiction of the HMTA, however, extends only to hazardous materials transported "in commerce." 49 App. U.S.C. § 1804(a)(1). Transportation in commerce is defined as transportation that is in, or affects, interstate trade or traffic. See 49 App. U.S.C. § 1802(2). RSPA applies this definition to exclude from HMTA jurisdiction transportation that is entirely on private property and neither follows nor crosses a public way. If transportation occurs only on privately owned roads, it is not transportation in commerce under the HMTA. Whether the property owner permits general public access is not relevant in this case.

This interpretation concerns only the HMTA, and does not speak to the applicability of other Federal laws or regulations to the transportation you describe. In addition, the "in commerce" requirement that limits the reach of the HMTA does not prevent the State of California, acting under its own authority, from regulating hazardous materials transportation in areas outside of HMTA jurisdiction.

I hope this response is helpful to you. If you have further questions, please feel free to telephone me or Edward Bonekemper, Assistant Chief Counsel for Hazardous Materials Transportation, at (202) 366-4400.

Sincerely,


Judith S. Kaleta
Chief Counsel