



US Department
of Transportation

Research and
Special Programs
Administration

Office of the
Chief Counsel

475 North 5th Street
Washington, D.C. 20590

AUG 9 1994

Mr. Stanley J. Olander
President
Electrochemical Products, Inc.
17000 Lincoln Avenue
New Berlin, WI 53151-2781

Dear Mr. Olander:


Thank you for your letter inquiring about State requirements for labeling hazardous materials while in transportation. The Research and Special Programs Administration (RSPA) is the agency within the Department of Transportation (DOT) responsible for issuing the Hazardous Materials Regulations (HMR) which govern the transportation of hazardous material in commerce.

The Federal law which authorizes DOT to issue the HMR has been codified recently at 49 U.S.C. § 5101 et seq. (replacing the Hazardous Materials Transportation Act). Section 5125(b)(1) specifically provides that State laws, regulations and requirements on certain subjects -- including the labeling of hazardous material in transportation -- are preempted unless they are "substantively the same as" the requirements in the HMR.

In accordance with 49 U.S.C. § 5125(d), any person "directly affected" by a State requirement who believes that the requirement is preempted by the Federal hazardous material law may, in addition to informal contacts with the State agency concerned, either (1) bring suit in Federal court for a judicial decision on preemption, or (2) apply to RSPA's Associate Administrator for Hazardous Materials Safety for an administrative determination of preemption. RSPA's procedures for applying for a preemption determination are contained at 49 C.F.R. §§ 107.201 - 107.211.

I hope this information is helpful. If you have further questions, please contact Edward Bonekemper, my Assistant Chief Counsel for Hazardous Materials Safety & Research and Technology Law, or Frazer Hilder, an attorney on Mr. Bonekemper's staff. You may write them at the above address or call them at 202-366-4400.

Sincerely,


Judith S. Kaleta
Chief Counsel