



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

Office of the  
Chief Counsel

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

MAR 7 1996

Mr. Gary J. Garrahan  
Environmental Engineer  
Digital Audio Disc Corporation  
P.O. Box 3710  
Terre Haute, IN 47803-0710

Dear Mr. Garrahan:

I am responding to your February 27, 1996 letter in which you asked about the application of the Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-180). In your letter you stated:

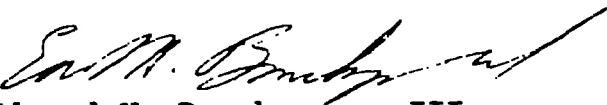
Digital Audio Disc Corporation (DADC) owns and operates two manufacturing facilities located in Terre Haute, Indiana. One manufacturing facility is located at 1800 N. Fruitridge Avenue (on the west side of N. Fruitridge Avenue); the other manufacturing facility is located at 3181 N. Fruitridge Avenue (on the east side of N. Fruitridge Avenue). DADC also owns the properties on which both manufacturing facilities are situated. The property lines extend into N. Fruitridge Avenue. Since N. Fruitridge Avenue is a public way, rights-of-way exist.

In your letter, you indicated that DADC plans to construct an underground tunnel which will run between the two facilities. This tunnel will be used to move non-hazardous and hazardous materials between the two facilities. The tunnel would not be open to the public and access would be restricted to DADC personnel. You asked if the Federal hazardous materials transportation law or the HMR would apply to the movement of hazardous materials through the proposed tunnel.

Based on the scenario outlined in your letter, neither the Federal hazardous materials transportation law nor the HMR would apply to the movement of hazardous materials through the proposed tunnel. The jurisdiction of the Federal hazardous materials transportation law and the HMR encompasses hazardous materials transported "in commerce." Thus, the Federal hazardous materials transportation law and the HMR do not apply to transportation that is entirely on private property and neither follows nor crosses a public way.

I hope this response is useful to you. If you have any additional questions concerning the law or regulations discussed in this letter, please call Robert A. Monniere at 202-366-4400.

Sincerely,



Edward H. Bonekemper, III  
Assistant Chief Counsel for  
Hazardous Materials Safety

cc: Mr. Edward T. Mazzullo - DHM-10