



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave. SE
Washington, D.C. 20590

JUN 29 2010

Mr. Christopher R. Bryant
Bergeson & Campbell, P.C.
1203 Nineteenth Street, NW
Suite 300
Washington, DC 20036-2401

Ref. No. 10-0105

Dear Mr. Bryant:

This responds to your letter requesting clarification of the exceptions provided for lead acid batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether the condition specified in § 173.159(e)(4) applies to only one shipper as stated in our November 4, 2009 response (Ref. No. 10-0025) and whether that response supersedes our July 22, 2009 response on the same subject.

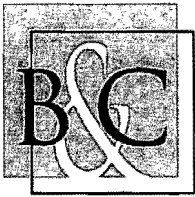
The answer to both of your questions is yes. The exceptions provided in § 173.159(e) only apply to a single shipper of batteries per transport vehicle and not to multiple shippers (so-called "milk runs"). Additionally, we have removed the July 22, 2009 letter you reference from our interpretation database to avoid any confusion regarding this issue in the future.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell".

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



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Stevens
§ 173.159
Batteries
10-0105

April 30, 2010

Via E-Mail

Ms. Susan Gorsky
Regulations Officer
Office of Hazardous Materials Standards
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
East Building, PHH-10
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Confirmation of PHMSA's Interpretation of "One Shipper"
Provision at 49 C.F.R. § 173.159(e)(4)

Dear Ms. Gorsky,

On behalf of our client, RSR Corporation, I am writing for two reasons. First, I want to thank you and Messrs. Betts, Hilder, and Leary for meeting with us on March 18, 2010, to discuss several important issues related to the transportation of lead acid batteries destined for reclamation. We found our discussion with you and your colleagues to be productive and look forward to working with your office on its efforts to ensure the continued safe transportation of lead acid batteries.

I also write to confirm our understanding that the Pipeline and Hazardous Materials Safety Administration's (PHMSA) interpretation that 49 C.F.R. § 173.159(e)(4) applies only to a shipper of lead acid batteries from a single location and does not exempt so-called battery "milk runs" from regulation under the Hazardous Materials Regulations (HMR).¹ In January 2009, PHMSA updated the HMR provisions that exempt shipments of lead acid batteries from regulation.² The pertinent provision, which became effective on January 1, 2010, states that shipments of wet batteries (such as lead acid batteries) are exempt from the HMRs if the following conditions are met:

¹ A "milk run" occurs when a vehicle stops at several separate locations to pick up lead acid batteries and places them on the vehicle for transport.

² 74 Fed. Reg. 2200 (Jan. 14, 2009).



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- (1) No other hazardous materials may be transported in the same vehicle;
- (2) The batteries must be loaded or braced so as to prevent damage and short circuits in transit;
- (3) Any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries; and
- (4) *The transport vehicle may not carry material shipped by any person other than the shipper of the batteries.*³

We read 49 C.F.R. § 173.159(e)(4) to apply only to shipments of batteries from a single location; it would not exempt “milk runs” where batteries from several locations are picked up and transported in the same vehicle. You and your colleagues agreed with this interpretation at the March 18 meeting. As we discussed, however, some in the battery recycling industry may be relying upon a letter PHMSA issued on July 22, 2009, to Johnson Controls Inc. to justify “milk runs” under 49 C.F.R. § 173.159(e)(4). In our meeting, you explained that after PHMSA issued the July 22, 2009, letter, it reconsidered the interpretation it had provided to Johnson Controls and, in a letter to Wal-Mart dated November 4, 2009, made clear that “49 C.F.R. §173.159(e)(4) applies to only one shipper.”⁴ In short, the November 4, 2009, letter supersedes the July 22, 2009, letter.

To dispel any potential confusion about this provision, and to help the regulated community to ensure compliance with the HMRS, we respectfully request that your office confirm in writing that PHMSA interprets 49 C.F.R. §173.159(e)(4) to apply to only one shipper, that “milk runs” are not authorized under this provision, and that the July 22, 2009, letter has been superseded by PHMSA’s letter of November 4, 2009.

³ 49 C.F.R. § 173.159(e)(4) (emphasis supplied).

⁴ Letter from Joseph Solomey, Assistant Chief Counsel for Hazardous Materials Safety, to Mr. Thomas E. Evans, Wal-Mart Stores, Inc. (Nov. 4, 2009).



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Once again, thank you for taking the time to meet with us. We appreciated the opportunity to discuss these issues with you and stand ready, willing, and able to help PHMSA in its important work.

Sincerely,

Christopher R. Bryant

cc: Mr. Robert E. Finn (via e-mail)
Mr. John A. DePaul (via e-mail)
Mr. Bruce R. Murray (via e-mail)