



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

OCT 27 2011

Mr. Brian Allen
RCRA Compliance Inspector
Oregon Department of Environmental Quality
475 NE Bellevue Dr., Suite 110
Bend, Oregon 97701

Ref. No. 11-0128

Dear Mr. Allen:

This responds to your May 12, 2011, request for clarification on the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Part 171-180) to Conditionally Exempt Small Quantity Generators (CESQG), small businesses that are not state or local government entities, of hazardous waste.

Note that we define a hazardous waste as a material subject to EPA hazardous waste manifest requirements under 40 CFR Part 262. See § 171.8. However, it is our understanding that, except for certain types of waste, a CESQG waste is not subject to regulation under Part 262 (40 CFR 261.5). Thus, it may be that the CESQG waste is not subject to the EPA manifest requirements, and therefore, not a hazardous waste by our definition. For ease of understanding of this letter, the term "hazardous waste" will be used to refer to an HMR-defined hazardous waste and the term "waste" will be used to describe a CESQG hazardous waste.

Your questions are paraphrased and answered as follows:

Q1. Are CESQGs required to comply with the HMR if the waste being transported is listed in the § 172.101 Hazardous Material Table (HMT) (i.e., 30 gallons of Spent Acetone, flammable or corrosive liquids, etc.)?

A.1 Yes, a CESQG must comply with the HMR if the waste being transported is listed by name in the HMT. A hazardous material, by definition, includes material designated as hazardous in the HMT. See § 171.8 for the full definition of a hazardous material.

Q2. Would transportation of a CESQG waste be subject to the shipping paper requirements of § 172.200 and all applicable labeling, marking and/or placarding requirements?

A2. Yes. In general, a hazardous material is subject to all HMR requirements including labeling, marking and shipping papers. Under certain conditions, such as the mode of transport or the packaging quantity, a material may be eligible for exceptions from the requirements. Exceptions are referenced in the Column (8) authorized packaging of the HMT. Additional exceptions may be found in special provisions referenced in Column (7).

Q3. Is a CESQG transported waste required to be described using the word "Waste" preceding the proper shipping name?

A3. It depends on whether the waste is subject to the manifest requirements of 40 Part 262. If the CESQG waste is not subject to the EPA manifest requirements, then it is not by our definition a hazardous waste, and therefore, may not be described using the word "Waste" as part of the proper shipping name.

Q4. When a CESQG waste is picked up by a vendor for hire, can a hazardous waste manifest be used for this type of shipment in lieu of a bill of lading (BOL)?

A4. Yes, as long as the manifest contains all the information required by Subpart C (shipping papers) of Part 172 of the HMR.

Q5. May a vendor for hire use a hazardous waste manifest and/or use the word "Waste" preceding the proper shipping name when consolidating waste at collection events for further transport if this waste is not subject to RCRA (40 CFR 260-280)?

A5. A hazardous waste manifest may be used as a shipping document for a non-RCRA hazardous waste. See A3 regarding use of the term "Waste."

Q6. Is the record retention requirement 2 years for hazardous material shipping papers?

A6. Yes. For hazardous materials other than hazardous waste, the shipping paper must be retained for two years after the material is accepted by the initial carrier. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. See § 172.201(e).

Q7. Are CESQGs that ship and/or sign hazardous material shipping papers or hazardous waste manifests required to have DOT and security training every 3 years?


A7. Yes. A hazmat employer must ensure that each of its hazmat employees is trained in accordance with the HMR. Each hazmat employee must receive the training outlined in § 172.704 at least every three years, including security awareness training and potentially in-depth security training. See Subpart H (training) of Part 172 of the HMR.

Q8. May states adopt their own exemptions to HMR requirements?

A8. No. See 49 CFR 107.202(a) for standards for determining preemption.

I hope this answers your inquiry. If you need additional assistance, please contact this Office at (202) 366-8553.

Sincerely,

A handwritten signature in black ink that reads "Ben Supko". The signature is written in a cursive style with a long, sweeping underline.

Ben Supko
Acting Chief, Standards Development Branch
Standards and Rulemaking Division



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Eastern Region Bend Office
475 NE Bellevue Drive, Suite 110
Bend, OR 97701-7415
(541) 388-6146
Fax (541) 388-8283

Boothe
§ 171.1
§ 172.101
§ 172.200
Applicability
11-0128

May 12, 2011

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

I would like to receive clarification of 49 CFR HMR requirements for Conditionally Exempt Small Quantity Generators of hazardous waste (i.e. < 220 lbs/month) that transport their waste to state run collection events and/or to local transfer stations for final disposal.

1. Are CESQG's required to abide by HMR if the hazardous waste being transported is listed in the 171.101 Hazardous Material Table (i.e. 30 gallons of Spent Acetone, flammable or corrosive liquids etc.)?
2. Would a CESQG be subject to the shipping paper requirements of 172.200 and all applicable labeling, marking and/or placard requirements?
3. Are CESQG required to use the word "Waste" preceding the proper shipping name?
4. When a CESQG hazardous waste is picked up by a vendor for hire. Can a Hazardous Waste manifest be used for this type of shipment in lieu of a BOL?
5. May a vendor for hire use a hazardous waste manifest and/or use the word "Waste" preceding the proper shipping name when consolidating waste at collection events for further transport if this waste is not subject to RCRA (40 CFR 260-280)?
6. Is the record retention requirement 2 years for hazardous material shipping papers?
7. Are CESQG that ship and/or sign hazardous material shipping papers or hazardous waste manifests required to have DOT and security training every 3 years?
8. May states adopt their own exemptions to HMR requirements?

Your prompt return request is greatly appreciated.

Thank You,


Brian Allen

RCRA Compliance Inspector
Oregon Department of Environmental Quality
475 NE Bellevue Dr. Suite 110
Bend, OR 97701

Phone: 541-633-2014

Email: allen.brian@deq.state.or.us

