



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

DEC 17 2012

Ms. Kathy Flippin
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176

Ref. No.: 12-0185

Dear Ms. Flippin:

This is in response to your August 20, 2012 letter posing several questions concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to damaged wet electric storage batteries. In your letter you describe a scenario in which lead acid batteries are transported by highway from various locations (persons who offer or offerors) to a processing facility (consignee). Occasionally, leaking or otherwise damaged batteries are discovered by the personnel at the processing facility.

Q1. What is the status of a shipment of lead acid batteries that are discovered to be leaking after the shipment was delivered to the consignee?

A1. For purposes of the HMR, transportation begins when a carrier takes physical possession of a hazardous material for the purposes of transporting it and continues until the hazardous material is delivered to the destination indicated on a shipping paper, package marking, or other medium. Incidents that are discovered after transportation has ended are not subject to the HMR or incident reporting requirements.

Q2. Who bears the responsibility for compliance with the HMR from the point of origin (offeror) to the processing facility (consignee)?

A2. A person offering a hazardous material for transportation in commerce is responsible for performing the functions of an offeror in compliance with all of the applicable regulations (see §§ 171.2(a) and 173.22). No person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter.

Q3. If damaged and leaking batteries are discovered at the consignee facility what are the requirements applicable to the carrier and the consignee?

A3. If the damaged and leaking batteries are discovered after delivery to the consignee, the HMR do not apply.

Q4. What are the HMR violations applicable to the consignee and the carrier if the consignee rejects a load of damaged or leaking batteries and the damaged batteries are not repaired or repackaged by the original offeror, the carrier or the consignee?

A4. Each person who offers a hazardous material for transportation or transports a hazardous material in commerce is responsible for compliance with the applicable requirements of the HMR, or a special permit, approval, or registration issued under the HMR, with respect to any regulated function that it performs or is required to perform. Generally, each person is responsible only for the specific regulated functions that it performs or is required to perform. Penalties for violations of the HMR are assessed on a case-by-case basis and depend on a number of factors, including the nature, circumstances, extent, and gravity of the violation.

Q5. What are the responsibilities of the consignee under the HMR if the consignee rejects this shipment (i.e. the consignee asks the offeror to take the batteries to the point of origin without accepting the load)?

A5. If a consignee refuses to accept a shipment of hazardous material that shows evidence of leakage during transportation, it is the carrier's responsibility to safely repair, overpack, store or dispose of a leaking or damaged hazardous material package in accordance with §§ 177.854(b) and 173.3(c). If a load is rejected by the consignee, and all transportation arrangements are made by the carrier, the consignee would not be responsible for compliance with the HMR.

Q6. How does the consignee or carrier's responsibility change if the consignee does not sign the shipping paper prior to returning the shipment to the point of origin?

A6. Each person is responsible for the specific regulated functions that it performs or is required to perform.

Q7. How does the consignee or carrier's responsibility change if the motive power is removed before the decision is made to return the shipment to its origin?

A7. Transportation ends once delivery of the hazardous material is complete. The HMR do not define when delivery is complete other than to say that transportation continues until the hazardous material is delivered to the destination indicated on a shipping paper, package marking, or other medium.

Q8. How does the carrier fix damaged or leaking batteries before it leaves the consignee facility if the shipment is rejected by the consignee?

A8. A damaged or leaking battery may be offered for transport if the damaged or leaking battery: (1) has been drained of battery fluid to eliminate the potential for leakage during transportation; (2) is repaired and/or packaged in such a manner that leakage of battery fluid is not likely to occur under conditions normally incident to transportation; or (3) the damaged or leaking battery is transported under the provisions of §§ 177.854(b) and 173.3(c).

Q9. Are there any regulations that specify the time permitted for damaged or leaking batteries to be managed after they are discovered to be damaged or leaking?

A9. All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination. When leaks occur in packages or containers during the

course of transportation, subsequent to initial loading, disposition of such package or container must be made by the safest practical means in accordance with § 177.854(c), (d) and (e). Facilities that receive hazardous material but do not offer for transportation or transport hazardous material are not subject to the HMR, but may be subject to regulations promulgated by the Occupational Safety and Health Administration, the Environmental Protection Agency and state or local governments.

Q10. Do the answers to the above questions change based on how many batteries are found to be damaged or leaking (i.e. 1, 5, 10 or more)?

A10. No.

Q11. In this scenario and the responsibilities of the consignee and the carrier for ensuring the safety of a shipment of batteries, what are the violations that can result from non-compliance?

A11. For purposes of the HMR, an "offeror" is any person who performs or is responsible for performing a pre-transportation function required under the HMR for transportation of a hazardous material in commerce or who tenders or makes the hazardous material available to a carrier for transportation in commerce (see § 171.8). There may be more than one offeror for a shipment of hazardous materials. Regardless of the designation of a person in your scenario as the original offeror of the shipment, the carrier of the shipment or the consignee who rejected the shipment, the person performing the function is responsible for performing it in accordance with all applicable requirements of the HMR.

Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$75,000 for each violation, except the maximum civil penalty is \$175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training. When a violation is a continuing one and involves transporting of hazardous material or causing them to be transported, each day of the violation is a separate offense.

Q12. Would this shipment still be considered in transportation if the driver is in the motor vehicle or the motive power is still attached to the trailer?

A11. Hazardous materials unloaded by the carrier or in the presence of the carrier would be considered transportation functions and thus subject to the HMR.

Q13. Does the responsibility for compliance with the HMR shift from the carrier to the consignee if the consignee signs the shipping paper before the damaged or leaking batteries are rejected or reshipped?

A13. Since HMR do not require the consignee to sign a shipping paper upon receipt of a hazardous material, the act of signing a shipping paper does not change the applicability of the HMR.

Q14. What are the answers to these questions if the offeror is the same company as the consignee? What if the original carrier and the consignee are different companies?

A14. In the scenario you describe, it is irrelevant if the carrier and the consignee are the same or different companies.

Q15. What is the carrier's responsibility if a leaking battery is discovered while in their possession?

A15. Before commencing transportation, the carrier must drain the battery fluid to eliminate the potential for leakage during transportation; (2) repair and/or package the battery in such a manner that leakage of battery fluid is not likely to occur under conditions normally incident to transportation; or (3) transport the damaged or leaking battery in a salvage package in accordance with the provisions of § 173.3(c).

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Delmer Billings". The signature is written in a cursive style with a large, prominent initial "D".

Delmer Billings

Senior Regulatory Advisor

Standards and Rulemaking Division

Leary
\$173.159
Batteries

Drakeford, Carolyn (PHMSA)

From: Betts, Charles (PHMSA)
Sent: Thursday, August 16, 2012 11:08 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Request for Regulatory Interpretations Regarding Damaged Lead Acid Batteries

12-0185

Importance: High

From: Flippin, Kathy [<mailto:kathy.flippin@dnr.mo.gov>]
Sent: Monday, August 13, 2012 11:07 AM
To: Roye, Joemo CTR (PHMSA)
Cc: Clatterbuck, Robert (PHMSA); Pollard, Terry (PHMSA); Lamb, David; Hansen, Dennis; Groner, Darleen; Jones, Ricardo
Subject: Request for Regulatory Interpretations Regarding Damaged Lead Acid Batteries
Importance: High

U.S. Department of Transportation
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

To Whom It May Concern:

RE: Request for formal letter of interpretation regarding damaged lead acid batteries

I am writing to request regulatory interpretations on the following questions regarding the management and shipment of lead acid batteries. As this may be used for a meeting on August 16, 2012, we would appreciate any efforts you could make in expediting this request. In answering these questions, would you please provide answers that address each of these three perspectives?

- A. If the batteries are damaged and leaking,
- B. If the batteries are damaged, have no liquid and are not leaking and
- C. If the batteries are damaged, do contain liquid, but are not leaking.

As each of these will be evaluated, this letter will refer to each of these as "damaged and/or leaking batteries."

1. If a shipment of damaged and/or leaking lead acid batteries arrives at a battery processor (consignee) under shipping paper/bill of lading, what is the status according to U.S. Department of Transportation (DOT) regulations? Who bears the responsibility for the shipment to and from the consignee, onsite management (i.e., repairs, shipping papers, truck management and placarding, any time limits for rejecting the shipment, onsite processing) and what are the requirements at that point for the following?
2. What are the requirements for the consignee?
3. What are the requirements for the shipper?
4. If the consignee sees that the batteries are damaged and/or leaking and the consignee "rejects" the shipment (i.e., asks the shipper to take the batteries back to the point of origin without the consignee signing the shipping paper, and without the shipper or the consignee fixing the load) what are the DOT violations/citations and to whom would they be issued? In this case, what responsibility does the consignee bear under DOT regulations for fixing the damaged and/or leaking batteries before shipment? What are the shipper's responsibilities?

5. In scenario #4 above, how does the consignee's or the shipper's responsibility change (or the shipper's responsibility change) if he/she does or does not sign the shipping paper before returning the shipment to the point of origin?
6. In scenario #4 above, how does the consignee's or the shipper's responsibility change if the trailer is removed from the power source before the decision is made to return the shipment to the point of origin?
7. According to DOT regulations, how does the shipper have to "fix" the load of damaged and/or leaking batteries before it leaves the consignee's facility if rejected by the consignee? What other actions must the shipper take to be in compliance with DOT regulations regarding damaged and/or leaking battery repair and preparation for shipment? What requirements must the consignee follow in regard to these steps?
8. Are there any regulations that specify the time allowed for the batteries to be managed in these scenarios after they are discovered to be damaged and/or leaking? What are they? Who must comply with these time limits?
9. How do the answers to 1-7 above change based on how many batteries are found to be damaged and/or leaking (i.e., 1, 5, 10, more?)
10. Given the scenario above and both the shipper's and the consignee's responsibilities regarding a shipment containing damaged and/or leaking batteries, what are the DOT citations/violations that can result? Please list separately for the shipper, the consignee, and the point of origin.

What constitutes "possession" and "relinquishing possession" in the contexts noted above?

1. Would the answers change if the driver is still in the truck or still at the consignee's facility, or if the tractor is still attached to the trailer?
2. Please explain if there is a difference if the consignee signs the shipping paper before the damaged and/or leaking batteries are rejected or sent back on the road?
3. What are the answers to the questions above if the shipper's company is the same as the consignee's? And what are the answers if the shipper is an independent company (i.e., not owned by the consignee)?
4. If a leaking battery is discovered while in the possession of the carrier, what is their responsibility?

Thank you very much for your help in answering these questions. If you have any questions, please contact me at 573-751-1718 or at Kathy.Flippin@dnr.mo.gov

Sincerely,

Kathy S. Flippin, Chief
Compliance and Enforcement Section
Hazardous Waste Program

cc: robert.clatterbuck@dot.gov
ferry.pollard@dot.gov