



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety Administration**
AUG 31 2007

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Mr. Randy Tanner
SouthWest Electronic Energy Corporation
12701 Royal Drive
P.O. Box 848
Stafford, TX 77497-0848

Ref. No.: 07-0110

Dear Mr. Tanner:

This is in response to your June 5, 2007 letter regarding transportation via aircraft of lithium batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

Q1. Under the HMR, may a shipper hire a private aircraft operator to transport lithium batteries?

A1. Yes. The HMR do not regulate contractual agreements between a shipper and an air carrier. If you or an aircraft operator you hire to transport your lithium batteries have any questions concerning aircraft operational requirements (e.g., flight permits or "will-carry" status) we suggest you contact the Federal Aviation Administration. You should also be aware that a private aircraft operator hired to transport hazardous materials is considered to be in commerce and therefore is subject to the HMR.

Q2. Does the 35 kg weight limit in Column 9B of the Hazardous Materials Table (HMT) for lithium batteries apply when transported on a privately owned aircraft hired by a shipper?

A2. Yes. If a flight is for the furtherance of a commercial purpose the lithium batteries described in your letter are subject to the HMR. Only if an aircraft is owned and piloted by a private citizen transporting his or her own hazardous materials for personal use is the flight not regulated under the HMR. A private aircraft "hired" by a shipper to transport a hazardous material is considered to be "in commerce" and is subject to the HMR (including the 35 kg weight limit).

Q3. Does the 35 kg weight limit apply to lithium batteries when transported on a company-owned aircraft?



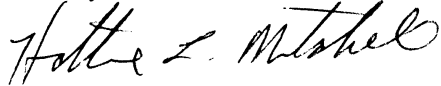
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A3. Yes. See A2.

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

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in black ink and is positioned below the word "Sincerely,".

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

SWE

SOUTH WEST ELECTRONIC ENERGY GROUP

Pollack
\$173,185
Lithium
Batteries
07-0110

Dear Mr. Ed Mazullo,

Good afternoon, I have a concern that I would like to get an official ruling on. Here is the scenario. I would like to Transport UN3090 Lithium Batteries, 9, PG II and UN3091 Lithium Batteries contained in Equipment, 9, PG II from one location to another by Air.

- 1- If we hired a Private Aircraft to transport. Would this be legal? If so, can we exceed 35kg per package?
- 2- If my company owned an Aircraft could we then transport the same UN3090 and UN3091 from one location to another?

Can I get the official ruling in writing?

Thank you
Randy Tanner (Traffic Manager)
South West Electronic Energy Corp.
281-240-4000

