U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

SEP 2 9 1999

Mr. Leo Traverse
HAZMATEAM, INC.
12 Kimball Hill Road
Hudson, NH 03051-39155

Ref. No. 99-0225

Dear Mr. Traverse:

This is in response to your letter dated August 20, 1999, concerning the meaning of the plus (+) sign in Column 1 of the Hazardous Materials Table (HMT) under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the appearance of a plus (+) sign is an indication that the proper shipping name may not be changed, even if the material is in a mixture.

The plus (+) sign in Column 1 of the HMT fixes the proper shipping name and hazard class for certain materials without regard to whether the material meets the hazard class shown in column 3 of the HMT. However, this applies only to materials which are essentially pure, or of a technical grade. The plus (+) sign eliminates shipper discretion in determining whether a material meets the defining criteria for a hazard class. The proper shipping name is no longer fixed if the hazardous material is mixed with another hazardous material or a substantial amount of a non-hazardous material. The plus (+) sign is no longer considered when the mixture or solution no longer exhibits the same hazard to humans as the technical or essentially pure grade of the material. In that case, the most appropriate description for the material shall be determined in accordance with § 172.101(c)(12).

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

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards

990225

171.1

Office of
The General Counsel

The Boeing Company
P.O. Box 3707, MC 13-08
Seattle, WA 98124-2207

MATHEW FRANK

July 23, 1999

Johnson
171.1
99-0202

Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U. S. Department of Transportation
Research and Special Programs Administration
DHM-10
400 Seventh Street, S. W.
Washington, D. C. 20590-0001

BOEING

Re: DOT Interpretation of Transportation "in Commerce" by a Government Contractor at a Privately-Owned Facility (i.e., not Government-Owned or Government–Operated)

Dear Sir:

I am seeking concurrence from the Department of Transportation ("DOT") that the intra-plant movement of hazardous materials by a government contractor at its own privately owned facility does not constitute "transportation in commerce" and thus, would not be subject to the hazardous materials regulations ("HMR").

ANALYSIS:

As a general rule, the intra-plant movement of hazardous materials exclusively on privately-owned property does not constitute "transportation in commerce" for purposes of the applicability of the HMR. Such exclusively intra-plant movement would not be subject to the various packaging, shipping paper, and placarding requirements of the HMR.

> The movement of hazardous materials by a consignee exclusively on private property, for purposes relating to a manufacturing process, is not transportation in commerce under Federal hazmat law.

See 60 Fed. Reg. at 8,787 (Feb. 15, 1995) (Attachment 1). See also 60 Fed. Reg. at 8,777 and 8,784 (stating that the "Federal hazmat law and the HMR do not apply to the movement of hazardous materials exclusively at a consignee's facility." and "Federal hazmat law and the HMR do not apply to transportation of hazardous materials exclusively on private property," respectively.) (Attachment 2).[1]

[1] There are a few exceptions to this general proposition not relevant to the question being posed by this letter. See, e.g., 49 C.F.R. 174.67 (regarding the applicability of the HMR to certain specific carrier and consignee handling of hazardous materials including unloading of railroad

The determinative factor in the applicability of the HMR is the status of the facility, and not the status of the operator. That is, so long as the transportation of hazardous materials is solely intra-facility (i.e., not along or across a public road nor at a government-owned/leased facility which is open to the public[2]) at a privately owned facility, the requirements of the HMR do not apply. Thus, when a government contractor is operating exclusively at its own privately-owned facility, the government contractor is treated no differently than any other person subject to the HMR. The intra-plant movement of hazardous materials at the government contractor-owned facility is not considered to be "in commerce" and the HMR does not apply. This is consistent with the general Hazardous Materials law and regulations which require that government contractors be treated "in the same way and to the same extent" as any other person subject to the HMR requirements. See 49 U.S.C. 5126(a); 40 Fed. Reg. at 8,620 (Feb. 28, 1991) (Attachment 3) and 49 C.F.R. 171.1(b).

CONCLUSION

The HMR does not apply to the movement of hazardous materials that is entirely on private property and neither follows nor crosses a public way, regardless of whether the movement involves a private company operating at its own privately-owned facility or whether it involves a government contractor that is operating at its privately-owned facility.

I look forward to your concurrence. In the meantime, if you have any questions about the contents of my letter, please contact me at (206) 544-3198. Thank you for your attention to this matter.

Sincerely,

Michele A. Giusiana
Counsel, The Boeing Company

Encls.

---

tank cars, incidental to transportation in commerce, even when that unloading takes place exclusively at a consignee's facility).

[2] See, e.g. DOT Legal Opinion Letter from Judith S. Kaleta, Chief Counsel, RSPA, U. S. DOT to Susan Denny, Director, Transportation Management Program, U. S. DOE (April 23, 1991) (Attachment 4); DOT Legal Opinion from Edward H. Bonekemper, III, Assistant Chief Counsel, RSPA, U. S. DOT to Jo Ann Williams, Office of the General Counsel, U. S. DOE (April 26, 1993) (Attachment 5).