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

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

FEB 14 2006

Mr. Lawrence J. Maron
509 Willow Run Knoll
Lakeland, FL 33813

Reference No.: 06-0011

Dear Mr. Maron:

This is in response to your January 8, 2006 letter requesting clarification of the hazardous materials training requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-180). Specifically, you ask whether the training requirements apply to employees at your company.

In your letter, you state that your company, KCI, operates a chemical manufacturing facility in Florida and has obtained a radioactive materials license from the Florida Department of Health, Bureau of Radiation Control (FDHBRC). The waste stream from this facility, hydrochloric acid, is disposed by deep well injection into limestone formations at a depth of more than 4,000 feet below ground surface, as permitted by the State of Florida. As part of the injection process, 2,000 gallons of oil are mixed with a radioactive tracer (5 millicuries of Scandium 46) and injected into the well on a quarterly basis. The oil protects the steel well casing from corrosion and provides a means of verifying that the well casing fluid is not leaking. The integrity of the well is verified by lowering a gamma sensing tool into the well to identify the location of the oil via the radioactivity of the Scandium tracer. You state that the tracer is purchased from a company in New Mexico and received by KCI via overnight delivery at the injection site, where it is mixed with the oil and injected into the well on the day of delivery. Employees of KCI hand-carry the tracer from the receiving office to the injection well. You ask whether employees who conduct these specific duties are subject to the hazardous materials training requirements of the HMR.

The answer is no. Hazmat employees are subject to the hazardous materials training requirements found in § 172.704. A hazmat employee, as defined § 171.8, is a person who is employed by a hazardous materials employer and who, in the course of employment, directly affects hazardous materials transportation safety. For the purposes of the HMR, "transportation in commerce" begins when a carrier takes possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material arrives at its destination.

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Under your scenario, KCI employees do not directly affect hazardous materials transportation because transportation has ended when the hazardous material arrives at the chemical manufacturing facility. Therefore, these employees are not subject to the training requirements of the HMR.

I trust this satisfies your inquiry.

Sincerely,

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

Lawrence J. Maron, P.E.

January 8, 2006

Ms. Susan Gorski, PHH-10 – Acting Director
Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
400 7th Street SW, Room 8430
Washington, D.C. 20590-0001

Re: Need for Clarification
49 CFR Part 172, Subpart H Training
K.C. Industries, L.L.C.
Mulberry, Florida

Dear Ms. Gorski,

On behalf of K.C. Industries, L.L.C., (KCI), this letter is submitted to respectfully request your interpretation of the above-referenced rule citation. The following presents a description of the conditions at the KCI facility and identifies the question pertaining to the need for hazardous materials training under the requirements of the U.S. Department of Transportation (USDOT).

BACKGROUND

KCI operates a chemical manufacturing facility in Mulberry, Florida. The waste stream from this facility, a weak hydrochloric acid, is disposed by deep well injection. The fluid is injected into limestone formations at a depth of more than 4,000 feet below ground surface. The disposal of the waste stream is permitted by the State of Florida.

As part of the operation of the injection well, approximately 2000 gallons of oil are injected into the well on a quarterly basis (every 3 months). Prior to injection of the oil, a radioactive tracer (5 millicuries of Scandium 46) is mixed with the oil. Since the oil is lighter than the plant waste stream being injected, as well as the natural fluid existing in the injection formation, the oil rises to the top of the "cavity" that has been formed in the limestone formation. The injection of the oil serves two purposes: to protect the steel well casing from corrosion due to the high chloride content of the formation fluid and the corrosiveness of the injected waste stream; and, to provide a means of verifying that fluid is not leaking upwards around the outside of the well casing. The latter is verified by using a gamma sensing tool that is lowered down the well to identify the location of the oil via the radioactivity given off by the Scandium tracer that is mixed with the oil.

In order to receive and inject the radioactive tracer, KCI has obtained a Radioactive Materials License (No. 3126-1) from the Florida Department of Health, Bureau of Radiation Control (FDHBRC). Rules governing the issuance of Radioactive Materials Licenses are contained in Chapter 64E-5, Control of Radiation Hazard Regulations, of the Florida Administrative Code (F.A.C.). Sections 64E-5.1501 and 64E-5.1502, F.A.C. require licensees to comply with the applicable requirements of the USDOT specified in Title 49, Code of Federal Regulations (CFR). More specifically, Part 172, Subpart H of 49 CFR requires all employees involved with work that directly affects hazardous material transportation safety to receive hazmat training

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before performing such functions. A copy of Sections 64E-5.1501 and 64E-5.1502, F.A.C. are attached for your information.

NEED FOR CLARIFICATION

The FDHBRC feels that the KCI personnel licensed to handle the radioactive tracer material at the site are subject to the USDOT's hazmat training requirements. KCI, however, questions the need for this training for the following reasons:

- KCI **does not** ship, prepare the tracer for shipment or transport the radioactive tracer. The tracer is purchased from SpectraTec Services in Albuquerque, New Mexico, who ships the tracer via overnight delivery (Federal Express). Federal Express delivers the tracer to the site and it is mixed with the oil and injected on the day of delivery. The only "transporting" of the tracer by KCI is when it is carried by hand from the Receiving Office to the injection well.

- In discussions with personnel from the USDOT's Hazardous Materials Answer Line, they have stated that the hazmat rules apply only to persons who transport, or offer for transport, hazardous materials.

- In the history of receiving the radioactive tracer at the site (over 20 years), there has never been a need to ship the tracer back to the supplier.

- KCI has developed a Radiation Safety Manual and Operating Instructions, which must be approved by the FDHBRC prior to issuance of the Radioactive Materials License, that describes the procedures used to handle the radioactive tracer from receipt to injection with the oil.

- Personnel named on the Radioactive Materials License to handle the tracer material have undergone training in the handling of radioactive materials in accordance with the rules of the FDHBRC.

The FDHBRC has stated that the requirement for hazmat transportation training will be waived for the KCI site if concurrence can be obtained from the USDOT that such training is not required under 49 CFR Part 172 for the receipt of radioactive materials at the site. Since KCI only **receives** and **does not ship or transport** the radioactive tracer, KCI believes it is not subject to the training required under 49 CFR Part 172, Subpart H.

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We will greatly appreciate your written response to this matter. If you have any questions, please do not hesitate to contact me at 813-781-2670 or Mr. Paul Maasen of KCI at 636-327-3090.

Yours very truly,

Lawrence J. Maron, P.E.

cc: Paul Maasen – K.C. Industries, L.L.C.