



U.S. Department
of Transportation

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

**Pipeline and
Hazardous Materials Safety
Administration**

MAR 27 2006

Ted L. Nebrich, Jr., CHMM, QEP, REM
Technical Director
Waste Technology Services, Inc.
435 North 2nd Street
Lewiston, NY 14092

Reference No. 06-0037

Dear Mr. Nebrich:

This is in response to your February 13, 2006 letter to Mr. Jack Albright, Information Resources Manager, Office of Administration, Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation. Mr. Albright forwarded your letter to PHMSA's Office of Hazardous Materials Standards for response.

You ask if hazardous waste or suspected hazardous waste samples may be transported to a laboratory or other facility for analysis under the Materials of Trade (MOTs) exceptions prescribed in § 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You explained that some of these samples may not be considered a hazardous waste under 40 CFR 261.4(d) of the Environmental Protection Agency's regulations, and asked if these excluded materials may still be transported as MOTs under the HMR.

For purposes of the HMR, a hazardous waste is a material that is subject to the Universal Hazardous Waste Manifest requirements in 40 CFR Part 262 (see § 171.8). Under § 173.6, MOTs are hazardous materials, other than hazardous wastes, transported on a motor vehicle and meeting the definition for one of the following hazard classes or divisions: 2.1 (flammable gas), 2.2 (non-flammable gas), 3 (flammable), 4.1 (flammable solid), 4.3 (dangerous when wet), 5.1 (oxidizer), 5.2 (organic peroxide), 6.1 (poison), 6.2 (infectious, other than Risk Group 4), 8 (corrosive), 9 (miscellaneous), ORM-D (consumer commodity). A Division 4.1 self-reactive material or a Division 6.1 poison-by-inhalation material may not be transported as MOTs. See §§ 173.6(a)(5), 173.124(a)(2),



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173.6

173.133(a)(2), and 173.133(b). A sample may be transported as MOTs provided it meets one of the above-mentioned authorized hazard classes and it complies with additional requirements for the material prescribed in § 173.6.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell". The signature is fluid and cursive, with the first name being the most prominent.

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

Edmonson

§173.6

MOT

06-0037

February 13, 2006

Mr. Jack Albright
Pipeline and Hazardous Materials Safety Administration
400 Seventh Street, SW
Room 2103
Washington, DC 20590

Dear Mr. Albright:

I am writing to request a clarification of the Materials of Trade exceptions in 49 CFR 173.6. Specifically, does this exception pertain to samples which as Environmental Consultants we need to transport to laboratories and hazardous waste facilities (TSDFs) for analysis? That is, some if not most of these samples are RCRA hazardous waste or are suspected to be hazardous waste. However, under RCRA in 40 CFR 261.4 Exclusions...samples being transported to a laboratory or TSDF for analysis and treatability studies are not considered a hazardous waste and are afforded some exclusions from hazardous waste generator requirements including manifesting.

Therefore, would these samples since they retain the RCRA exclusion from being a hazardous waste, do they also retain the DOT exception for "Materials of Trade" (MOTS)? Also, if these samples were not afforded the RCRA exclusion for "samples for analysis" (because of state requirements) could they still get the DOT exception for "Materials of Trade"?

If you have any further questions, please do not hesitate to contact me.

Very truly yours,
WASTE TECHNOLOGY SERVICES, INC.

T.L. Nebrich, Jr., CHMM, QEP, REM
Technical Director

TLN/tln

Nickels, Matthew <PHMSA>

From: Albright, Jack <PHMSA>
Sent: Monday, February 13, 2006 9:44 AM
To: INFOCNTR <PHMSA>
Subject: FW: Materials of Trade

From: Ted L. Nebrich Jr. [mailto:TLNebrich@wtsonline.com]
Sent: Monday, February 13, 2006 9:51 AM
To: Albright, Jack <PHMSA>
Subject: Materials of Trade

Dear Mr. Albright

Attached is a clarification request letter which I have also sent to you under a separate cover. I'm requesting a clarification of the DOT "Materials of Trade" exception.

Thanks in advance....

T. L. Nebrich Jr
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