



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

APR 21 2006

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

Mr. Phil Stewart
The Dow Chemical Company
1424 Vidal Street
Sarina, ON N7T 8C6

Ref. No.: 06-0052

Dear Mr. Stewart:

This is in response to your letter dated February 24, 2006, requesting further clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your scenario, you indicate RCRA hazardous waste is shipped across and along public roadways that follow the boundaries of your facility. Specifically, you ask whether shipping paper requirements apply if your wastes are not required to be manifested under the U.S. Environmental Protection Agency (EPA), but still meet the definition of a hazardous material under the HMR.

A hazardous waste, for the purposes of the HMR, is any material that is subject to the Hazardous Waste Manifest Requirements of the EPA specified in 40 CFR Part 262 (see § 171.8). As provided in § 172.205(a), no person may offer, transport, transfer, or deliver a hazardous waste unless an EPA Form 8700-22 and 8700-22A (when necessary) hazardous waste manifest is prepared in accordance with 40 CFR § 262.20 and is signed, carried, and given as required of that person.

In the scenario you provided, the EPA does not require preparation of the manifest when hazardous waste is transported between two portions of a contiguous facility, across or along a public roadway that follows the boundary of the facility. Therefore, your material does not meet the definition of a hazardous waste in § 171.8, and the Department of Transportation does not require a waste manifest to be created. However, if your material meets the definition of a hazardous material in § 171.8 and is transported across or along a public roadway following the boundary of the facility, the shipping paper requirements in Part 172, Subpart C of the HMR are applicable.

I hope this clarifies your request,

Sincerely,

Charles E. Betts
Senior Transportation Specialist
Office of Hazardous Materials Standards



060052

171.8
172.205(a)



The Dow Chemical Company
Midland, MI 48667

February 24, 2006

John Gale
Chief, Standards Development
Office of Hazardous Materials Standards
400 Seventh Street SW
Washington, D.C. 20590

BAH
§ 171.8
§ 172.101
Applicability
06-0052

Reference 05-0298

In follow-up to your response letter dated January 17, 2006, concerning the transportation of waste, we are requesting additional clarification. The material we would transport is in fact a RCRA hazardous waste, not a non-hazardous waste as indicated in your response. In some cases the waste would also be a DOT hazardous material, and our question centers on a potential (presumably inadvertent) conflict between RCRA regulations and DOT regulations.

Executive Summary

EPA (under the RCRA program), expressly does not require a manifest when hazardous waste is transported between two portions of a contiguous facility, across or along a public roadway that that follows the boundary of the facility. In contrast, DOT's regulations are silent on this subject and could be interpreted as requiring a manifest under those circumstances. We are requesting an interpretation that the DOT regulations are in harmony with the RCRA regulations. This would allow us to follow the RCRA regulations (*i.e.*, not issuing a manifest), so long as other appropriate shipping papers accompany the waste in accordance with normal DOT requirements.

Discussion

Our company has a large (roughly 1900-acre) manufacturing facility with its own wastewater treatment plant, hazardous waste incinerator, and hazardous waste landfill. All are fully permitted. Due to the size of our facility, public roads divide some portions of the facility from other portions. However, the facility is considered contiguous under applicable state and federal RCRA provisions.

The facility includes a chemical storage area known as "US-10 Tank Farm." This tank farm, which occasionally generates small amounts of hazardous waste, is physically located across a public road from other portions our site. The hazardous waste landfill is similarly separated from other portions of our site by a different public road. Both roads run along our facility boundary. In order to transport waste from US-10 Tank Farm to

our landfill, a truck would need to drive along these public roads. At all times while on these public roads, the truck would be contiguous to a boundary of our site.

EPA specifically exempts this situation from needing a manifest: see 40 CFR 262.20(f)

The requirements of this subpart and §262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 40 CFR 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in 40 CFR 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

We have attached several additional documents from the Environmental Protection Agency (EPA) to further substantiate the fact that EPA does not require a manifest in these circumstances.

In contrast, the DOT regulations at 172.205 could be interpreted, at least superficially, as requiring a manifest. This is because the DOT regulations are silent on the subject of transportation along a facility boundary between portions of the facility. We anticipate that DOT did not intend to create an inconsistency between the regulatory programs. Rather, we believe that DOT would have intended for its regulations to be consistent with the RCRA regulations. Consequently, in situations where EPA has said no manifest is required, we are hopeful that DOT will accept normal shipping papers. We would appreciate your written confirmation.

Please contact Phil Stewart or Sharon Woolman as given below if you have any questions regarding this request.

Regards,

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Attachments: DOT Letter

EPA opinion letters



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