



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

JAN - 6 1999

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

Mr. William Reinike  
Shell Chemical Company  
2982 Washington Blvd.  
Belpre, Ohio 45714

Ref. No. 98-0361

Dear Mr. Reinike:

This is in response to your letter of December 2, 1998, requesting clarification on the requirements for materials of trade (MOTs) under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). You presented the following scenario and would like confirmation that the MOTs exception in § 173.6 applies.

A barge of butadiene arrives at your Ohio River dock facility. A technician draws 500 ml of butadiene from the barge into a small cylinder. He uses a company pickup truck to transport the cylinder to your main plant. At the plant the butadiene is analyzed to ensure the material in the barge meets you manufacturing specifications.

You also presented the following proposed scenario:

A barge stops at Neal's Landing in Vienna, WV, before proceeding to your plant. You would like to draw a sample of material at this time so that by the time the barge reaches your dock facility the material would have already been analyzed. The difference in this scenario is that the trip is 10 miles each way and crosses state lines.

Both scenarios you present are suitable for the MOTs exception. You are a private carrier transporting small amounts of hazardous material in direct support of your business and you state that all provisions of § 173.6 are met.

I hope this information is helpful.

Sincerely,

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

171.8

98-0361  
LaValle  
~~5 173.6~~  
171.8 MOT

December 2, 1998

William Reinike  
Shell Chemical Company  
2982 Washington Blvd.  
Belpre, OH 45714

Ms Diane LaValle  
Transportation Specialist  
Research and Special Programs Administration  
U.S. Department of Transportation  
Washington, DC 20590

Dear Ms LaValle,

Thank you, again, for providing an interpretation of the "material of trade" definition. I would like to once again explain the situations or scenarios affecting our sampling and transportation processes to ensure that we will meet the intent of the material of trade definition. Shell's Belpre, OH, plant is solely a manufacturing facility. We do ship our finished product by contract carrier, but we are not in the transportation business. Here are the scenarios as I described in our telephone conversation.

In one situation we receive butadiene (BD) by barge at our Ohio River dock facility. (Butadiene is a liquefied flammable gas that meets the DOT definition of a 2.1 material.) Our dock facility is separated from the main plant by a two-lane state highway. A technician draws a 500 ML (13.8 oz.) of BD from the barge into a small cylinder. He (she) then uses a company pickup truck to transport the cylinder across the highway and into the main plant where our laboratory is located. Butadiene is a key ingredient or raw material in our manufacture of synthetic rubber. Our laboratory analyzes the BD sample to ensure that the material in the barge will meet our manufacturing specifications. We do not realize or receive revenue from the laboratory analysis. The analysis is part of the plant operating cost instead.

The second scenario represents a proposed idea. We want to be sure that all regulatory requirements are met before we act on the idea. Butadiene barges stop at Neal's Landing in Vienna, WV, before proceeding to our plant. If we can draw material samples when the barge stops at Vienna, we can have them analyzed before the barge finally arrives at our dock facility. This idea allows us to begin unloading the barge immediately when it arrives at Shell, and eliminates a three hour delay. The sampling process and quantities, and the mode of transportation are the same. But this time the trip is 10 miles each way through two small cities. The trip also means that our technician will enter West Virginia, then return to Ohio.

As the DOT focal point for our plant I want to be very sure that we continue to meet all 49CFR requirements for shipping hazardous materials. On the other hand, I want to help make our current and proposed sampling processes as user friendly as the regulations will allow. That is my primary reason for wanting to use the "material of trade" exception. I believe that the material and our mode of transportation meet item three (3) in the "material of trade" definition stated in 49CFR 171.8. We are using private motor carriage and the material is used in direct support of a principal business that is other than transportation by motor vehicle. We also meet the hazard class, quantity, and packaging requirements found in the material of trade exception [49CFR 173.6(a)(2) and (b)(1) and (5)]. The quantity is far less than the 220 pound limit, and we do use an approved leak tight DOT3E cylinder. The cylinder is protected and secured in the bed of the pickup truck during transportation.

According to the opening statement of 173.6, we are not subject to the requirements of the hazardous materials subchapter (171 - 180), except those included in the exception itself. The cylinders must be

marked with the identity of the material. The hazard communication requirement does not mention hazard class labels for non-bulk packaging. However, we will apply or attach the appropriate label to the cylinders. The cylinders conform to packaging, qualification, maintenance, and use requirements. The exception omits the requirements for shipping papers, training, and emergency response information. However, 29CFR 1910.1200 does require warning labels (such as a hazard class label), emergency response information (specifically, an MSDS), and employee training. The material of trade exception does not apply to 29CFR. Regardless of which agency mandates the requirements, a shipper would be very foolish to send out any hazardous material using untrained personnel and no appropriate material data or response information. Our people who do the sampling have received DOT GA&F and Function Specific training, and other training covering response to spills, leaks, and more.

Ms LaValle, will you please confirm, in writing, the agreement and understanding that our sampling, transportation, and use of butadiene meets the definition of "material of trade". Will you also confirm that, in your experienced opinion, we are meeting the appropriate requirements of the material of trade exception (173.6)? As I mentioned earlier, we do want to be sure that the hazardous materials regulations are followed correctly. Thank you for your continued help and cooperation.

Sincerely,



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