



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAY 28 1999

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Mr. Andrew N. Romach
Regulatory Compliance Manager
Radian International
Post Office Box 13000
Research Triangle Park, NC 27709

Reference. No. 99-0071

Dear Mr. Romach:

This is in response to your letter of March 5, 1999, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether the following scenario would be considered "storage incidental to transportation." You state that a national railroad company operates a "switching yard" where railcars are unhooked from the locomotive and moved into a side yard to await the next leg of transportation to their final destination. You also state that the railcars are waiting temporarily in the switching yard from minutes to a few days and are covered by a through bill of lading while they remain in the switching yard.

Based on the above scenario, the answer to your question is yes. "Storage incidental to transportation" means any temporary storage that may occur between the time a hazardous material is offered for transportation to a carrier until it reaches its intended destination and is accepted by the consignee. This would include temporary storage of a shipment during this time period at a carrier's terminal, consolidation, or storage facility, or on a dock area waiting for loading. That is, if a shipment is consigned to the end user of the hazardous material at the time the shipment is offered for transportation, most storage between offering and delivery to the end user is temporary storage. If the shipment is consigned by the offerer to a storage facility rather than to an end user, then the shipment is out of transportation once received and unloaded at the storage facility.

We are currently reviewing the applicability of the HMR to certain transportation-related activities, such as storage of hazardous materials, under a supplemental advance notice of proposed rulemaking (SANPRM) published under Docket HM-223, entitled "Applicability of the Hazardous Materials Regulations to Loading, Unloading and Storage". The SANPRM is available for viewing on the Internet at <http://dms.dot.gov> under RSPA Docket No. 98-4952.



990071

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the typed name.

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



RADIAN INTERNATIONAL

A DAMES & MOORE GROUP COMPANY

March 5, 1999

Mr. Ed Mazzullo, Director
Office of Hazardous Material Standards
Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20509-0001

FAX: (202) 366-3012

Dear Mr. Mazzullo:

I am writing to you to request a written regulatory interpretation concerning whether or not the following transportation situation would be considered **"storage incident to transportation."**

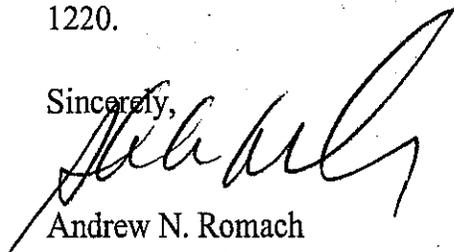
A national railroad company operates a "switching yard" where railcars are unhooked from the locomotive and moved into a side yard to await the next leg of transport to their final destination. These railcars are waiting temporarily in the switching yard from minutes to a few days, but most likely they would not remain onsite for more than one week. These railcars are unhooked primarily to change locomotives/train routes. These detached railcars are covered by a through bill of lading while they remain in the switching yard.

When I discussed this transportation situation with Mr. Delmer Billings, he stated that because these railcars remain under a through bill of lading and because they are not being stored on a spur of leased track, they would be considered "storage incident to transportation." He agreed that if these railcars contain DOT hazardous materials, they would remain subject to the DOT hazardous material regulations from their point of initial loading until they arrive at their final destination.

This question arose because any railcar that is considered "storage incident to transportation" would not meet the definition of *stationary source* found in 40 CFR §68.3 and would not require a Risk Management Plan (RMP) under the Clean Air Act as stated in EPA's Accidental Release Prevention rule. I appreciate your clarification of this transportation situation.

If you have any questions concerning this transportation situation, please call me at (919) 461-1220.

Sincerely,


Andrew N. Romach
Regulatory Manager

Engineering Services in North Carolina are performed through Radian International's wholly owned subsidiary, Radian Engineering, Inc.

Betts
§ 171.8 Storage Incident
to Transp.

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