



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

APR - 6 2000

Ref. No. 99-0302

Mr. David B. Weinberg
Howrey and Simon
1299 Pennsylvania Avenue NW
Washington, DC 20004-2402

Dear Mr. Weinberg:

This is in response to your letter dated October 28, 1999, and subsequent telephone conversations between Mr. Kerchief, of your firm and Eric Nelson of our staff regarding the shipment of small lithium batteries for recycling under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). I apologize for the delay and hope that it has not caused any inconvenience. Your questions are paraphrased and answered as follows:

Question 1: Are the only requirements applicable to the shipment of used small lithium batteries for recycling those set forth in § 173.185(h)?

Small lithium batteries which are excepted by § 173.185(b) or (c) are not subject to the requirements of the HMR. Section 173.185(h) applies to cells and batteries offered for disposal, and does not apply to cells and batteries offered for recycling. Small lithium batteries which are offered for recycling and are not excepted by § 173.185(b) or (c) are fully subject to the HMR and including, but not limited to, training, shipping papers, marking, and the forbidding for transportation of materials and packages which are likely to create a dangerous quantity of heat.

Question 2: As long as used dry cell batteries other than used lithium batteries are shipped via ground transportation for recycling or disposal, and are packaged and handled as to avoid smoke, fire, or resulting personal injury (e.g. preventing the combination of flammable materials or to allow off-gassing) do any further requirements of the HMR apply?

The answer is no, as long as the batteries are not a hazardous waste as provided by § 171.8. Special provision 130 of § 172.101, Hazardous Materials Table, excepts "Batteries, dry, *not subject to the requirements of this subchapter*" from regulation only when they are offered for transportation in a manner that prevents the dangerous evolution of heat (for example, by the effective insulation of exposed terminals). However, batteries that are not subject to the HMR when new, could be subject to the HMR as a Class 9 Miscellaneous hazardous material when regulated as a hazardous waste.



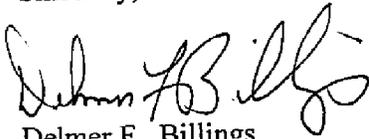
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In addition, § 173.21 Forbidden materials and packages, applies to every material in transportation in commerce at all times, which includes materials that are not specifically subject to the HMR in the event the material is used to create a device that generates sparks or a dangerous quantity of heat. For the purpose of § 173.21(c), "dangerous quantity of heat" is considered, in part, to be a sufficient amount of energy to cause leakage of the battery contents, smoke or fire, or personal injury.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "Delmer F. Billings".

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

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October 28, 1999

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99-0302

Mr. Tom Allan
Office of Hazardous Materials Standards
Research and Special Programs Administration (RSPA)
U.S. Department of Transportation
400 Seventh Street, S.W., Room 8422
Washington, DC 20590-0001

Re: Special Provision 130 and the Transportation of Used Dry Cell
Batteries for Recycling

Dear Mr. Allen:

I write on behalf of our client the Portable Rechargeable Battery Association ("PRBA"), to request confirmation of our understanding of the Department of Transportation's interpretation of the applicability of Special Provision 130, the July 7, 1999 Advisory Guidance, and its rules generally, to the ground transportation of used rechargeable and other dry cell batteries for recycling.

PRBA's membership includes approximately 100 of the nation's largest suppliers of rechargeable batteries and equipment powered by them. Many of its members support industry-wide efforts to collect used nickel cadmium batteries for recycling, and a number also have implemented (or are contemplating implementing) collection programs for used batteries that employ other chemical technologies.

We understand that you have advised at least one of our members orally that the DOT's Hazardous Materials Regulations (HMR) are directed principally at air transportation of products being offered for commercial purposes (e.g., for sale or distribution as is, or for incorporation into new battery-powered products). Further, we understand that you have advised that as long as ground shipments are handled so as to avoid leakage, smoke, fire or personal injury, DOT would not view shipments of used dry cell batteries (rechargeable and otherwise) for recycling or disposal as out of compliance with its regulations or guidance.

These interpretations seem quite sensible to us. To the best of our knowledge, the only portion of DOT's hazardous materials transportation rules which specifically addresses shipment of used batteries for recycling or disposal appears in the regulations directed to used lithium batteries, at 49 C.F.R. § 173.185(h). Lithium batteries, as you no doubt are aware, present the

greatest potential safety concern of all currently-employed battery chemistries. Yet this provision specifically excludes motor vehicle shipments of used small lithium batteries for disposal from most of the requirements of the HMR. All that is required is that the batteries and cells shipped are protected from short circuiting, and shipped in strong packaging.

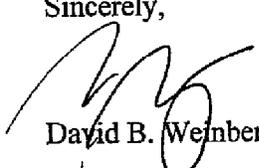
This being the case, it makes sense that ground shipment of used batteries that employ less problematic chemistries would be subject to even less regulation. Certainly, shipment of these products for recycling presents no greater hazard than shipment for disposal. Furthermore, the risk of combustion presented by these other battery chemistries is significantly lower than the risk presented by used lithium batteries, whether one considers risks arising from short circuiting, off-gassing, or external causes. In addition, to encourage recycling, it is important from a policy standpoint that shipping burdens be minimized. Finally, and probably most important, even if an incident should occur in ground transportation, its implications would be far less troublesome than would arise from an in-flight incident.

Obtaining prompt confirmation from DOT on this issue is especially important to PRBA at this time. Serious consideration is being given to expanding industry-wide collection-for-recycling programs from including only nickel cadmium rechargeable batteries to including virtually all rechargeable chemistries. This may not be possible, however, if the result of expansion is to dramatically increase the regulatory requirements applicable to ground shipments of collected used batteries.

Our clients thus would appreciate your prompt confirmation of the fact that DOT is of the view that, first, the only requirements applicable to the shipment of used small lithium batteries for recycling are those set forth in 49 C.F.R. § 173.185(h), and second, as long as used dry cell batteries other than used lithium batteries are shipped via ground transportation for recycling or disposal, and are packaged and handled so as to avoid smoke, fire, or resulting personal injury (e.g., preventing the combination of flammable materials or allowing off-gassing), no further requirements of the HMR regulations apply.

Thank you.

Sincerely,



David B. Weinberg

cc: Norm England, President, PRBA