



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JUN 30 2005

Mr. Mark Finarty
County of Dane
Department of Administration
210 Martin Luther King, Jr. Blvd., Room 425
Madison, WI 53703

Ref. No.05-0143

Dear Mr. Finarty:

This is in response to your letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to Dane County, Wisconsin employees and operations. You state that Dane County contracts with the State of Wisconsin Department of Transportation to maintain state roadways. The operations include the transportation and application of asphalt to the state roadways by county employees. You ask whether Dane County, as a government entity, is excepted from the HMR.

The HMR apply to entities covered by the definition of "person," in § 171.8, which includes a government entity offering hazardous material for transportation in commerce or transporting hazardous material in furtherance of a commercial enterprise. The HMR do not apply to government employees who are transporting hazardous materials in vehicles operated by government personnel for non-commercial purposes, regardless of whether one government entity reimburses the other for services rendered. Provided Dane County does not offer the hazardous material for transportation to a commercial carrier, the HMR do not apply.

I hope this information is helpful. Please contact this office if you have additional questions.

Sincerely,

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



050143

171.1



COUNTY OF DANE
DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT
210 Martin Luther King, Jr. Boulevard, Room 425
Madison, Wisconsin 53703
608/266-4965

McIntyre
§ 178.1
Applicability
05-0143

BARBARA WEGNER, A.R.M.
Risk Manager

MARK R. FINARTY
Safety Coordinator
608-267-1555

June 3, 2005

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/RSPA (DHM-10)
400 7th Street S.W.
Washington, D.C. 20590-001

Dear Mr. Mazzullo:

Dane County would like clarification regarding the applicability of the Hazardous Materials Regulations (Title 49 CFR Parts 100-185) to Dane County employees and operations. Specifically, Dane County (local government) contracts with the State of Wisconsin Department of Transportation to maintain state roadways. Our current operations do involve the use and transportation of hazardous materials to complete the road maintenance (See interpretation ref. No. 04-0052). Is this considered commerce under the regulation? Do the Hazardous Materials Regulations apply to Dane County employees and operations in this situation or does the exemption regarding "any government or.... that transports hazardous material for a governmental purpose" apply?

Your answers to the above questions should clarify our hazardous material requirements in our operations. Feel free to contact me if you have questions or comments. Thank you.

Be Safe.

Mark Finarty
Safety Coordinator

Dane County Risk Management
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210 Martin Luther King Jr. Blvd.
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U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

MAR 24 2004

Mr. Mark Finarty
Dane County Risk Management
210 Martin Luther King Jr. Blvd.
Room 425 CCB
Madison, WI 53703

Ref. No. 04-0052

Dear Mr. Finarty:

This is in response to your letter requesting clarification of the requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transportation of asphalt. Specifically, you ask whether placarding and marking are required for three scenarios as presented in your letter. You also ask whether a commercial driver's license (CDL) requires a hazardous materials endorsement for the driver of a vehicle transporting asphalt. Your scenarios and questions are paraphrased and answered below.

Question: Are placards, markings, and hazardous material endorsements on CDLs required for the following three scenarios?

Scenario #1. A medium curing asphalt is being transported by highway "in bulk up to 1200 gallons." The material has a flashpoint of 100 °F - 140 °F and is transported at a temperature of approximately 250 °F.

Answer: A bulk packaging containing a Class 3 elevated temperature material must display FLAMMABLE placards on both sides and both ends (see § 172.504(a)). In addition, a bulk packaging containing an elevated temperature material must display the HOT marking on two opposing sides, as specified in § 173.325. It is not clear from your letter whether "in bulk up to 1200 gallons" refers to the amount of asphalt or the capacity of the packaging. If the bulk packaging has a capacity of 1,000 gallons or more, it must be marked with the identification number on both sides and both ends (see § 172.302(a)(1)). If the bulk packaging has a capacity of less than 1,000 gallons, it must be marked with the identification number on two opposing sides (see § 172.302(a)(2)).



040052

172.504

With regard to whether a hazardous materials endorsement is required on a CDL for a driver transporting this material, the answer is yes. The Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Part 383, issued by the Federal Motor Carrier Safety Administration (FMCSA), address the requirements for hazardous material endorsements on CDLs. Section 383.93 requires a hazardous material endorsement for drivers transporting a hazardous material that is required to be placarded. For additional information on hazardous material endorsements, please contact FMCSA Headquarters in Washington, D.C. at 202/366-1790 or FMCSA's field office in Madison, Wisconsin at 608/829-7530.

Scenario #2. An asphalt emulsion is being transported by highway "in bulk up to 2000 gallons." The material has a flashpoint greater than 212 °F and is transported at a temperature of approximately 160 °F to 200 °F.

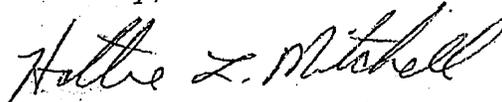
Answer: Under § 172.504(f)(9), for domestic transportation, a bulk packaging containing a Class 9 elevated temperature material does not require a Class 9 placard; however, the appropriate identification number for the material must be marked on both sides and both ends of the bulk packaging or on two opposing sides, depending on the capacity of the packaging (see Scenario #1). The identification number may be displayed on a Class 9 placard, an orange panel, or a white-square-on-point configuration. In addition, for elevated temperature materials, the HOT marking must be displayed on two opposing sides of the bulk packaging, as specified in § 173.325. For information on hazardous material endorsements, see the answer to Scenario #1.

Scenario #3: A rubber modified asphalt is being transported by highway "in bulk up to 400 gallons." The material has a flashpoint of 424 °F and is transported at a temperature of 300 °F to 400 °F.

Answer: The answers to Scenario #2 apply.

I hope this information is helpful. Please contact this office if you need further assistance.

Sincerely,



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



COUNTY OF DANE
 DEPARTMENT OF ADMINISTRATION
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BARBARA WEGNER, A.R.M.
 Risk Manager

McIntyre
 § 172.504
 § 172.101(a)
 Applicability & Placarding
 04-0052
 MARK R. FINAKTY
 Safety Coordinator
 608-267-1555

March 3, 2004

Mr. Edward T. Mazzullo
 Director, Office of Hazardous Materials Standards
 U.S. DOT/RSPA (DHM-10)
 400 7th Street S.W.
 Washington, D.C. 20590-001

Dear Mr. Mazzullo:

Dane County would like clarification of the placarding requirements of some of our highway maintenance operations. Please review the following operation descriptions and answer the questions:

Operation #1: Hauling and applying a medium curing asphalt, MC-800, in bulk up to 1200 gallons. The material has a flashpoint of 100 to 140 degrees Fahrenheit. The material is transported and applied at a temperature of approximately 250 degrees Fahrenheit.

- Is placarding required? Would the interpretation letter dated July 11, 1994 addressed to Mr. Marvin J. Ford III apply directly to this operation? If not, what?
- Is marking required? If so, what?
- Would a hazardous materials endorsement on a commercial driver's license be required to transport?

*MC Asphalt
 NA 1999
 ETC
 11/8/99*

Operation #2: Hauling and applying an anionic asphalt emulsion, HFRS-2P, in bulk up to 2000 gallons. The material has a flashpoint greater than 212 degrees Fahrenheit. The material is transported and applied at a temperature of approximately 160 to 200 degrees Fahrenheit.

- Is placarding required? If so, what?
- Is marking required? If so, what?
- Would a hazardous materials endorsement on a commercial driver's license be required to transport?

Operation #3: Hauling and applying a rubber modified asphalt in bulk up to 400 gallons. The material has a flashpoint of 424 degrees Fahrenheit. The material is transported and applied at a temperature of 300 to 400 degrees.

- Is placarding required? If so, what?
- Is marking required? If so, what?

E.Lav. H.M. 11/13/99

100°C = 212°F

CDL-Hazmat endorsement letter 2004

Page 2 of 2

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Safety Coordinator

Mark Pinsky



Be Safe

Your answers to the above questions should clarify our hazardous material requirements in our operations. Feel free to contact me if you have questions or comments. Thank you.

- Would a hazardous materials endorsement on a commercial driver's license be required to transport?