



U.S. Department
of Transportation

Research and
Special Programs
Administration

Office of the
Chief Counsel

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

File

DEC 12 1997

Thomas K. Teynor, Director
Waste Programs Division
Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

Dear Mr. Teynor:

I am writing in response to your October 10, 1997 letter requesting an interpretation regarding the applicability of Federal Hazardous Materials Transportation Law (Federal hazmat law), 49 U.S.C. 5101 *et seq.* and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, to the movement of hazardous materials within the site boundaries of the Department of Energy's (DOE's) Hanford, Washington site (the "Hanford Site").

You indicate in your letter that DOE is in the process of cleaning up and decommissioning the Hanford Site, which involves the on-site transportation of hazardous materials. You also indicate that the Hanford Site has several on-site roads which are not used by the general public but which are accessible from a number of public roads. Consequently, DOE uses guards and gates to control public access to the Hanford Site. However, you state that because of decreased security requirements and reduced funding, DOE is exploring replacing around-the-clock security patrols at egress points with automated access control systems (key-card operated lift gates with or without surveillance cameras) as a means of restricting public access to the Hanford Site. Also, DOE would post signs that read, "U.S. GOVERNMENT PROPERTY, NOT OPEN TO THE PUBLIC BEYOND THIS POINT, OFFICIAL USE ONLY By those conducting business of or with the U.S. Department of Energy. Trespassers may be prosecuted under applicable state and local laws."

You question whether removing the guards and gates will cause the on-site movement of hazardous materials at the Hanford Site to fall under the requirements of the HMR. RSPA previously stated in an April 23, 1991 interpretation letter issued to DOE that "If a road is used by members of the general public (including dependents of Government employees) without their having to gain access through a controlled access point, transportation on (across or along) that road is in commerce. On the other hand, if access to a road is controlled at all times through the use of gates and guards, transportation on that road not in commerce." Based on the information contained in your letter and subsequent e-mail, removing the guards

and gates from the access roads into the Hanford Site will not cause the on-site movement of hazardous materials to be regulated under the HMR because the road is not used by members of the general public. In addition to the fact that the public does not normally use the on-site roads at the Hanford Site, the signs and automated access control systems that you propose to install would preclude or discourage unauthorized access to the site. Consequently, if the proposed access control systems and signs are installed, DOE's on-site transportation of hazardous materials will not be considered transportation "in commerce" and will not be regulated under the HMR.

If you need further clarification concerning this matter, please do not hesitate to contact me again.

Sincerely,



Edward H. Bonekemper, III
Assistant Chief Counsel for
Hazardous Materials Safety and
Research Technology Law