



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

JUN 29 2009

Mr. Andy Coyne
Environmental Outsource, Inc.
6055 East Washington Blvd., Suite 360
Los Angeles, CA 90040

Ref. No.: 09-0108

Dear Mr. Coyne,

This in response to your May 5, 2009 letter regarding the exception for nonspillable wet electric storage batteries specified in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) in §173.159(e). Your questions are paraphrased as follows:

Q1: If a carrier ships ORM-D on the same vehicle as the batteries, can it still take advantage of the exception in §173.159(e) ?

A1: No. In accordance with § 173.159(e), electric storage batteries containing electrolyte or corrosive battery fluid are excepted from the HMR when transported by highway and rail provided no other hazardous materials are transported on the same vehicle.

Q2: If a carrier ships non-hazardous materials on the same vehicle as the batteries, may it still take advantage of the exception in § 173.159(e)?

A2: Yes. The non-hazardous material must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries. Moreover, the transport vehicle may not carry material shipped by any person other than the shipper of the batteries.

Q3: Must non-hazardous materials (e.g. boxes of gloves) transported on the same vehicle be blocked and braced as stated in §173.159(e)(3)?

A3: Yes. See A2 above.

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

Sincerely,

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

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Tuesday, May 05, 2009 4:50 PM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Clarification of 49 CFR 173.159

Andrews
§ 173.159
Batteries
09-0108

From: Andy Coyne [mailto:andy@eoiehs.com]
Sent: Tuesday, May 05, 2009 3:42 PM
To: PHMSA HM InfoCenter
Subject: Clarification of 49 CFR 173.159

Completed via phone by RB on 5/5 @ 447 pm

Dear Sir or Madam,

I wanted to get a clarification of the exception for nonspillable wet electric storage batteries. I would like to know if a transporter can ship ORM-D and other non hazardous materials (e.g. Gloves) on same the vehicle if it meets the requirements below and still be able to use the exception. (i.e. not placarding, filling out hazmat shipping papers, etc.) Would an ORM-D fall into item 1 and nullify the exception? Would a box of gloves have to be blocked & braced as item 3 states?

“(e) Electric storage batteries containing electrolyte or corrosive battery fluid are not subject to the requirements of this subchapter f transportation by highway or rail if all of the following requirements are met:

- (1) No other hazardous materials may be transported in the same vehicle;
- (2) The batteries must be loaded or braced so as to prevent damage and short circuits in transit (e.g., by the use of non-conductive caps that entirely cover the terminals);
- (3) Any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries; and
- (4) The transport vehicle may not carry material shipped by any person other than the shipper of the batteries.”

I appreciate your assistance with this inquiry and look forward to you

Thank you,

Andy Coyne
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5/5/2009

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