



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

1200 New Jersey Ave, SE
Washington, D.C. 20590

OCT 29 2009

Ms. Becky Conn
DOT Coordinator
Texas City Refinery
BP Products North America
P.O. Box 401
Texas City, TX 77592

Reference No. 09-0232

Dear Ms. Conn:

This is in response to your October 14, 2009 e-mail and October 21, 2009 telephone conversation with a member of my staff concerning the material of trade exception in § 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask if your company's employees may fill bottles with hazardous materials samples from a BP Products North America marine facility and transport them by contract motor carrier (a cargo inspection company) approximately 1-1/2 miles over public roads to your company's on-site lab as a material of trade.

The answer is no. A "material of trade" is defined in § 171.8 as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. A "private motor carrier" is a carrier that transports the business's own products and does not provide such transportation service to other businesses. A contractor may take advantage of the material of trade exception (§ 173.6) and carry hazardous materials in direct support of his or her own business if their primary business is other than transportation by motor vehicle. But a company that hires a contractor or other transportation company to transport its hazardous materials may not transport these materials as a material of trade.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie Mitchell", written over a white rectangular area.

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

Drakeford, Carolyn (PHMSA)

From: Betts, Charles (PHMSA)
Sent: Wednesday, October 14, 2009 1:02 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Request for Interpretation

Edmonson
§173.6
MOT Exceptions
09-0237

From: Conn, Becky [mailto:Becky.Conn@bp.com]
Sent: Wednesday, October 14, 2009 12:58 PM
To: Betts, Charles (PHMSA)
Subject: Request for Interpretation

Dear Mr. Betts,

This request for interpretation is submitted regarding the applicability of the Materials of Trade exception for the transportation of hazardous materials samples by a cargo inspection company, when not in furtherance of their primary business of inspection and testing.

The scenario is a cargo inspection company is contracted to transport hazmat samples from a our marine facility to our on-site laboratory, a distance of approximately 1-1/2 miles on public roads. The sample bottles are not filled by the employees of the cargo inspection company and are not destined to be tested or retained by the cargo inspection company. Our employees fill the bottles and offer them to the cargo inspection company for transport to our lab. The inspection company is contracted to provide shipping papers and packaging and is paid on a "per run" basis, with a "run" being each time they are called to our marine facility to pick-up and deliver samples. Please advise, if in this scenario, the cargo inspection company would be authorized to transport hazardous materials under the MOT exception.

Your assistance is greatly appreciated.

Best regards,

Becky Conn
DOT Coordinator, Texas City Refinery
BP Products North America
Tel: 409-965-8661
Fax: 409-965-8704
Cell: 409-392-6399

Our stand: What you say matters.

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10/14/2009