



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

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

FEB 28 2011

Mr. Chuck Denny
Duke Energy Corporation
526 South Church Street, EC13K
Charlotte, NC 28202

Reference No.: 10-0261

Dear Mr. Denny:

This responds to your email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to a transport vehicle. Specifically, you ask for clarification on the definition of a transport vehicle and how this definition affects the use of the exceptions for materials of trade (MOTs) specified in § 173.6 and batteries specified in § 173.159 and 173.159a.

In your email, you describe a scenario in which a utility truck is pulling a trailer. The utility truck is carrying material meeting the MOTs exception, specified in § 173.6, while the trailer contains electric storage batteries. Your questions are paraphrased and answered as follows:

- Q1: Can a utility truck be considered a separate transport vehicle from a trailer that is connected to it?
- A1: The answer is yes. Transport vehicle means a cargo-carrying vehicle, such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, rail car, etc.) is a separate transport vehicle. (See § 171.8.)
- Q2: If the answer to Q1 is yes, may each transport vehicle utilize separate exceptions specified in the HMR? Specifically, can the utility truck use the MOTs exception specified in § 173.6 while the trailer uses the electric storage battery exception specified in § 173.159(e)?
- A2: The answer is yes. If a transport vehicle contains any other hazardous materials, even those excepted from all or part of the HMR (e.g., materials of trade; see § 173.6), the exception specified in § 173.159(e) does not apply. However, since the utility truck and trailer are considered separate transport vehicles a person may utilize separate exceptions in each transport vehicle provided they meet all the requirements specified for each exception (i.e. §§ 173.6 and 173.159(e)).

Q3: If a transport vehicle contains both spillable and non-spillable lead acid batteries, can that transport vehicle utilize the exceptions specified in §§ 173.159(e) and 173.159a simultaneously?

A3: The answer is yes. Electric storage batteries containing electrolyte or corrosive battery fluid are excepted from the HMR when transported in accordance with the provisions specified in § 173.159(e). The exception in § 173.159(e) is applicable to “Electric storage batteries containing electrolyte or corrosive battery fluid” and does not differentiate between spillable and non-spillable lead acid batteries. The condition specified in § 173.159(e)(1) states that no other hazardous materials may be transported on the same vehicle. For the purposes of this exception, spillable and non-spillable batteries are both considered “Electric storage batteries containing electrolyte or corrosive battery fluid.” Therefore, provided no other hazardous materials are loaded in the transport vehicle with the spillable and non-spillable electric storage batteries and all the requirements of §§ 173.159 and 173.159a are met, the electric storage batteries would be excepted from the HMR.

I hope this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Benedict
§173.159
§173.6

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Wednesday, December 15, 2010 3:56 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Hazmat Information Center Feedback: Shippers-General Requirements for Shipments and Packagings (Sections 173.1 – 173.476)

Batteries
10-0261

Hi Carolyn,

Chuck Denny requested we forward this e-mail as a request for a formal letter of interpretation.

Thanks,

Victoria Lehman
202-366-1035

-----Original Message-----

From: PHMSA-Feedback [mailto:PHMSA-Feedback]
Sent: Tuesday, December 14, 2010 2:37 PM
To: PHMSA HM InfoCenter; PHMSA Webmaster
Subject: Hazmat Information Center Feedback: Shippers-General Requirements for Shipments and Packagings (Sections 173.1 – 173.476)

The following questions pertain to battery shipments and reference DOT interpretation letters 06-0062, 07-0026 and 98-0532.

Issue 1

A utility truck is pulling a trailer. The utility truck is carrying material under the Materials of Trade exception, 49 CFR 173.6. The trailer contains only lead acid batteries. Can the trailer transport the lead acid batteries exception under 49 CFR 173.159 (e) while connected to the utility truck carrying hazardous materials under the Materials of Trade exception 49 CFR 173.6? Per DOT interpretation 07-0026, the battery exception 49 CFR 173.159 (e) cannot be used with the Materials of Trade exception 49 CFR 173.6 when they are being transported on the same vehicle. Per DOT Interpretation, 98-0532, each cargo-carrying body (trailer) is a separate transport vehicle. Can the utility truck be considered a separate transport vehicle from the trailer that it is connected and allow one exception to be used on the utility truck and the other exception to be used for the trailer?

Issue 2

A transport vehicle contains both spillable and non-spillable batteries. Can lead acid batteries under 49 CFR 173.159 (e) and lead acid batteries under 49 CFR 173.159a both be transported together using both exceptions? Per DOT Interpretation 06-0062, the usage of both exceptions being used at the same time appears to be accurate.

The questions were sent earlier, but no response was received. Therefore, resubmitting with cell phone telephone number.

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