

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Ms. Cynthia Hilton  
Association of Waste Hazardous  
Materials Transportation  
2300 Mill Road  
Alexandria, VA 22314

Dear Ms. Hilton:

Thank you for your letter of August 21, 1995, directed to Ann Codrington of my staff. Your letter requested clarification of the definition of "transporter," and more particularly, asked for guidance on how the manifest should deal with situations where one company owns or operates the cargo-carrying part of a transport vehicle, and another company owns or operates the means of locomotion. Our interpretation follows.

As you know, EPA defines Transporter in 40 CFR §260.10 as "a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water." A hazardous waste transporter involved with the transportation of an off-site shipment of hazardous waste must be identified on the manifest by the transporter's company name and the EPA Identification number issued to the transporter company. Currently, the Identification Number for a transporter is assigned to the transportation company as a whole, and all of the individual transporters (trucks) in a given company use the same EPA ID number. EPA expects this number to be listed in Boxes 5 (and Box 7 if more than one transporter is required) of the Uniform Hazardous Waste Manifest. Significantly, with respect to the identification of transporters on the manifest, the entity of interest is always the transport company itself, rather than particular sites of operation, or particular vehicles owned or operated by the company.

When the owner/operator of the means of locomotion is a different company than the company which owns or operates the cargo-containing transport vehicle (e.g., a railroad car or truck trailer), the Agency considers both parties to be potentially subject to the requirements imposed under 40 CFR Part 263 for transporters of hazardous waste. This follows because both the owner/operator of the means of locomotion and the owner/operator of the cargo-containing vehicle could reasonably be viewed under the circumstances as engaged in the off-site "transportation," that is, the movement of the hazardous waste by air, rail, highway, or water. (See definitions of "transportation" and "transporter" at 40 CFR 260.10). There could not be any movement of the hazardous

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waste without the joint efforts of the companies providing the means of locomotion and the means of conveyance, and the combination of the locomotion unit and the cargo-carrying unit(s) comprises the transport vehicle moving the shipment.

The Uniform Hazardous Waste Manifest includes spaces for the entry of identification information for multiple transporter companies, on Blocks 5 and 7 of the manifest, and on the corresponding blocks of the Continuation Sheet, where needed. Thus, one could include in separate manifest transporter blocks the relevant information identifying the company providing the locomotion and the company providing the cargo-carrying unit.

However, EPA believes that the better practice under these circumstances (i.e., two companies jointly moving the shipment during a segment of the waste's transportation) is to identify on the manifest only the transporter company that is primarily responsible for the movement of the waste over this transportation segment. EPA considers the primarily responsible company to ordinarily be the employer of the individual who actually performs the positive acts required of transporters under the Part 263 regulations. These acts include signing and dating the manifest when received from the generator, returning a signed copy of the manifest to the generator, obtaining the date of delivery and handwritten signature of the representative of the facility or next transporter to which the waste is delivered, giving the remaining copies of the manifest to the facility or next transporter accepting the shipment, and retaining a copy of the manifest for the transporter company's files.

EPA considers that the performance of these required acts connotes the custody, control, and responsibility for the movement of the waste, so that the employer of the individual performing these acts should generally be the company identified as the transporter on the manifest. If in particular instances, another company has agreed to assume responsibility for compliance with the transporter standards of Part 263, the other company may be identified as the transporter on the manifest, and the individual signing the manifest should do so in a manner that indicates that he is signing as agent for the other company. EPA will generally look first to this primarily responsible transporter for information about the movement of the waste, and for compliance with the Part 263 requirements.

Please note that EPA has announced similar policies to deal with circumstances where there are multiple generators or multiple importers associated with a hazardous waste. We frequently encounter facts under which more than one person contributes to the generation of a hazardous waste, and we use the term "co-generators" to identify the relationship between several generators. The policy for co-importers was explained to your association's chairman, Mr. Dickhutt, in a March 7, 1996, letter from Michael Shapiro.

Finally, please be aware that states may generally impose requirements which may be more stringent than federal RCRA requirements, except where their more stringent requirements are inconsistent with RCRA, or preempted by the DOT under the preemption authorities contained in the 1990 amendments to the Hazardous Materials Transportation Act. In a recent preemption decision touching upon the manifest, the DOT affirmed the principle that state laws may not significantly alter the information supplied on the manifest. See 60 FR 62527, 62537 (December 6, 1995). Based upon our reading of this preemption decision, states could not, for example, require additional information on the manifests specific to the vehicles involved in the movement of the wastes. We offer no opinion on whether DOT would conclude that a State requirement contrary to the EPA policy discussed above would be preempted under the federal hazardous materials transportation laws.

If you have further questions on this matter, please contact either Ann Codrington of my staff on (202) 260-4777, or Richard LaShier on (202) 260-4669.

Sincerely,

Michele Anders, Chief  
Generator and Recycling Branch

cc: Ann Codrington  
Rich LaShier