

Dr. Alan Sherman, Project Manager
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Dear Dr. Sherman:

Thank you for your letter of October 22, 2003, regarding training and signature requirements for generators and others who sign the generator's certification on the hazardous waste manifest. Each of the three questions you raised in your letter are set out below, followed by our response.

Question 1: *What sections of the regulations define training requirements, including frequency, for one who signs a hazardous waste manifest as the generator or on behalf of the generator?*

Answer: Training requirements relevant to hazardous waste generators signing manifests are specified by the Resource Conservation and Recovery Act (RCRA) Subtitle C and Department of Transportation (DOT) regulations. Federal RCRA regulations address training for generators at 40 CFR Part 262 or Part 265, depending on one's generator status. According to 40 CFR §262.34(a)(4), generators who generate more than 1,000 kg/month of hazardous waste (or more than 1 kg/month of acutely hazardous waste) must comply with the emergency preparedness and personnel training requirements at 40 CFR Part 265.16. Generators who generate greater than 100 kg but less than 1000 kg/month of hazardous waste, must comply with the emergency preparedness and personnel training requirements at 40 CFR §262.34(d)(5). We do not require generators of less than 100 kg/month of non-acutely hazardous waste ("conditionally exempt" small-quantity generators) to comply with these requirements. (See 40 CFR 261.5.)

Hazardous waste generators are also "shippers" of hazardous materials subject to DOT's hazardous materials transportation regulations. Since your question seems focused on the generator's certification language and the training relevant to one signing this certification, the DOT regulations addressing training for hazardous materials employees are the primary source of information that answers this question. Hazardous waste transportation is regulated jointly under RCRA regulations and DOT's hazardous materials regulations. Therefore, a generator who ships hazardous wastes off-site would need to comply with both the Environmental Protection Agency's training requirements noted above for generators and DOT's requirements for training hazardous materials employees. The training requirements for hazardous materials employees are defined in the DOT Hazardous Materials Regulations at 49 CFR Part 172, Subpart

H. These regulations specify training requirements for general awareness/familiarization, function-specific training, and safety training. The training must occur within 90 days of employment for new employees, and be repeated every three years. See 49 CFR §172.704.

Question 2: *Is the person signing the manifest required to have “first-hand knowledge” of the information listed on the manifest, and if so, what sections of the regulations define the extent of the knowledge that person who signs the manifest must have with respect to the waste and how it was characterized, managed, and prepared for transport?*

Answer: EPA’s requirements for preparing and signing manifests are based on the corresponding DOT regulations that apply to the execution and use of shipping papers for hazardous materials under the hazardous materials transportation laws. Our regulations on the use of the manifest were coordinated with DOT so that preparation of a manifest would also satisfy DOT requirements for a shipping paper. In any event, generators or their representatives signing manifests must comply with both the RCRA Subtitle C generator requirements as well as the requirements imposed by DOT regulations on shippers of hazardous materials.

The generator’s certification language on the manifest is essentially the same certification language that DOT refers to as the “shipper’s certification.” See 49 CFR §172.204. The hazardous waste generator or generator’s representative who signs the generator’s certification on the manifest is thus complying with DOT’s requirement that each person who offers a hazardous material for transportation must certify that the materials shipped are properly classified, described, packaged, marked and labeled, and in proper condition for transportation according to DOT regulations. See 49 CFR §172.204(a)(1), (2).

The hazardous materials regulations assume that the person signing the shipper’s certification will have personal knowledge of the facts respecting a waste and its proper preparation for transportation. The shipper’s certification requirements for hazardous materials (including hazardous waste) apply to each person who “offers” a hazardous material for transportation. 49 CFR §172.204(a). DOT has made it clear in its interpretations of the term “offeror” that this term extends to any person who actually performs the steps required to prepare a hazardous material for transportation. The person actually performing these steps could therefore certify to these facts based on their knowledge. We interpret our requirements for generators and the manifest to be consistent with DOT’s requirements for hazardous materials shippers and shipping papers. Therefore, we interpret our regulation on use of the manifest to mean that any representative of a generator who signs the generator’s certification on behalf of the generator must similarly have actual knowledge of the facts specified in the generator’s certification. This interpretation affects only the “shipper’s certification” language included in the generator’s certification; it would not extend to the waste minimization language that also appears on the manifest.

As for the extent of knowledge required, one would, at a minimum, need to have successfully completed the training requirements for hazardous materials employees specified in 49 CFR Part 172, Subpart H. This would enable one offering hazardous waste in transportation to know if they have properly classified, described, packaged, marked or labeled their hazardous waste under the hazardous materials and hazardous waste requirements, and enable one to certify

meaningfully if their waste shipment is in proper condition for transportation.

Question 3: *If the signor of the manifest has been properly trained and signs “on behalf of the Company,” can the signor be held personally liable?*

Answer: Yes. Under DOT interpretations, the offeror is any person who performs the steps of preparing materials for shipment, including signing the shipper’s certification. There can be more than one offeror of a shipment, and the several persons who are offerors can be jointly and severally liable for compliance. While it is more typical for the company represented by the signor to be the subject of enforcement actions, in some situations (e.g., egregious or criminal violations), the signor could be held personally liable.

I hope this information is helpful to you. If you have additional questions, please do not hesitate to contact Richard LaShier of my staff, who can be reached on 703-308-8796.

Sincerely yours,

Robert Springer, Director
Office of Solid Waste

cc: John Gale, DOT

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