



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
FRANKFORT, KENTUCKY 40622

DON C. KELLY, P.E.
SECRETARY OF TRANSPORTATION
AND
COMMISSIONER OF HIGHWAYS

BRERETON C. JONES
GOVERNOR

November 16, 1992

Hon. C. Ray Miskelley
Office of Chief Counsel
Department of Energy
Oak Ridge Operations
P. O. Box 2001
Oak Ridge, TN 37831-8510

Dear Mr. Miskelley:

I have reviewed your October 20 letter to Steve Maffett of the Kentucky Division of Vehicle Enforcement. You asked whether the motor vehicles described in your letter are subject to the provisions of 601 KAR 1:005. 601 KAR 1:005 Section 3 (2) specifically exempts vehicles owned by the federal government from the federal regulations adopted by the Kentucky regulations. Even though the vehicles in question are procured and owned by the federal government and are licensed with federal government tags, they may not meet the requirements of Section 3 (2).

Section 3 (2) requires vehicles owned by the federal government to be specifically excluded from 49 CFR Part 390 before they can be exempted from Kentucky regulation. As you know, Part 390.3 (f) (2) excepts "transportation performed by the Federal government". Since an independent contractor is actually performing the transportation, the vehicles would not be excepted from the CFR and therefore not exempted under Kentucky regulations.

Whether these vehicles are operating on a public highway is another issue. KRS 281.011 (2) defines motor vehicles as any motor propelled vehicle used for the transportation of persons or property on a public highway. "Public highway" is not statutorily defined, but case law says that a public highway is a road which is intended for the public generally and is maintained at the public expense. 39 Am.Jur.2d "Highway, Streets, and Bridges" Section 3. Under this definition, the roads located inside the fenced facilities are obviously not "public highways". However, the roads which "provide public access to the Reservation" would fall under this definition of "public highway". The vehicles in question would thus be subject to the regulations outside of the fenced area.

`If you have further questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen Reeder". The signature is written in a cursive style with a large, sweeping initial "S".

Stephen Reeder,
Deputy Secretary for Legal Affairs

cc: Norris Beckley
Karen Powell
Ken Wood
Steve Maffett