



US Department  
of Transportation  
Federal Highway  
Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

SEP 16 1994

Mr. Michael Maline  
Office of Transportation, Emergency  
Management, and Analytical Services  
Office of Compliance and Program Coordination  
Office of Environmental Management  
U. S. Department of Energy  
Washington, DC 20585

Refer To: HCC-20

Dear Mr. Maline:

This is in response to your request for an interpretation of the applicability of the Hazardous Materials Regulations (HMR) to the transportation of hazardous materials within one of your Department's facilities at Richland, Washington. The facility in question is identified as the 300 Area at the Hanford Site.

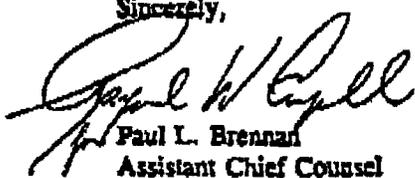
The 300 Area had been previously designated as a security area with fences and access gates manned by a security force. This facility was recently subject to a security reduction, and although fences and signs indicating the restricted and private nature of the area remain, the manned gatehouses have been removed. You ask whether the removal of the manned gatehouses has the effect of making the HMR applicable to the transportation of hazardous materials within the site.

As you are aware, the Department of Energy (DOE) is not required to comply with the HMR when it transports hazardous materials in a Government vehicle because those DOE activities are presumed to be for a governmental purpose and thus not considered *in commerce*, as this term is used to determine the applicability of the HMR. The DOE's contractors, however, must comply with the HMR even when the transportation is in a Government vehicle, unless such transportation is not in commerce. Such transportation may be considered not in commerce when it occurs solely within Government property and over roads that are private or to which access by members of the general public (including dependents of Government employees) is restricted and controlled at all times through the use of gates and guards.

Your description of the 300 Area appears to indicate that the roads inside that facility are private, and therefore, transportation of hazardous materials over such roads by DOE's contractors would not be considered in commerce for purposes of the HMR. If such transportation were to occur over public roads, it would be subject to the HMR unless access to that portion of the public road by members of the general public is restricted and controlled at all times, as described above.

I trust this information will be of assistance to you in clarifying this matter. Please let us know if you need further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Brennan". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul L. Brennan  
Assistant Chief Counsel  
for Motor Carrier Law