U.S. Department
of Transportation

Pipeline and Hazardous Materials Safety Administration

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Hazardous Materials Safety Law Division

LETTER OF INTERPRETATION

February 26, 2014

Gerald French
Department of Ecology
4601 North Monroe Street
Spokane, WA 99205-1295

Reference No.: 14-0036

Dear Mr. French:

Thank you for your June 6, 2013 letter regarding what you describe as rolling road closures between the Department of Energy's Hanford (DOE or Hanford) facility and the Permafix Northwest (PFNW) waste receiving facility located in Richland, Washington. In your letter you ask three questions based on the following fact pattern:

- The DOE and its contractors at its Hanford facility arrange and prepare radioactive hazardous waste for transport off-site to PFNW located in Richland, WA. Waste is also transported from PFNW back to Hanford.
- Waste shipments are transported by DOE and its contractors on a public highway between the Wye Barricade at the Hanford facility and PFNW. The 12 mile distance between the two locations is normally open to the public at all times.
- These waste shipments are transported via a "rolling road closure." This closure is affected by a front and rear escort conducted by the DOE and Hanford police.
- During the "rolling road closures," the public has unrestricted access to lanes moving in the opposite direction on Route 4.
- The public also has unrestricted access to roads leading to Energy Northwest Nuclear power plant facility and to other public roads that intersect Route 4 South at the DOE-Hanford facility.
- DOE and its contractors obtain a "Special Event Permit" to allow the transport of radioactive hazardous waste on Richland public streets.

- The public has unrestricted access in traffic lanes on Stevens Drive, Horn Rapids Road and Battelle Boulevard in Richland next to where the hazardous waste shipment is transported to PFNW. Public access is unrestricted and there are no signals, lights and gates to restrict, control and effectively preclude public access between the Wye Barricade and PFNW.

In your letter you ask the following questions:

- Does the rolling road closure described above between Hanford and PFNW meet the exclusions in § 171.1(d)(4) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 – 180)?
- Is the rolling road closure consistent with the criteria set forth in the April 23, 1991 letter from the Research and Special Programs Administration to Susan Denny (Denny Letter) for the transportation of hazardous material out of commerce?
- Does the rolling road closure effectively remove the transport activity described above from commerce?

The answer to each of your questions is no.

In order to understand the basis for each answer, it might be helpful to provide a brief overview of the relevant portions of § 171.1, which sets forth the applicability of the Federal Hazardous Materials Transportation Law (Hazmat Law; 49 U.S.C. 5101 *et seq.*) to persons and functions.

The Hazmat Law grants authority to the Secretary of Transportation (Secretary) to regulate the safe and secure transportation of hazardous materials in commerce. This authority includes the regulation of packaging, pre-transportation functions, and transportation functions, which are described in §§ 171.1(a – c). Section 171.1(d) provides some exceptions to the HMR. In this case, there are two possible exceptions to consider for the activity you describe: §§ 171.1(d)(4) and 171.1(d)(5).

Section 171.1(d)(4) applies to activity which occurs within a contiguous property that is intersected by a public road. It states that the HMR apply to rail or motor vehicle movements on this property, unless public access to the roads which run through this property is restricted. In the scenario you describe, § 171.1(d)(4) does not apply for two reasons: (1) the motor vehicle activity is taking place, at least in part, outside the property boundaries of the facility, and (2) public access is not restricted.

The scenario you describe appears to include both public roads cutting through contiguous property boundaries and public roads that are completely off-site. As long as the motor vehicle movement includes any transportation outside of the contiguous property boundary, § 171.1(d)(4) cannot apply.

Additionally, the rolling road closures you describe do not restrict public access and are more aptly described as a convoy. The lanes for traffic coming from the opposite direction are unimpeded by the convoy. It also does not appear that any measures are taken to restrict any

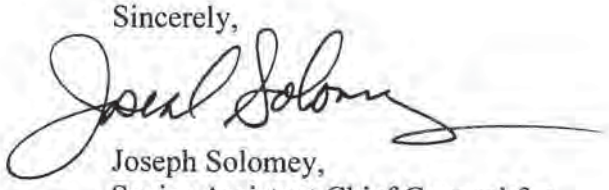
other type of public access or public exposure, such as joggers, cyclists, pedestrians, roadside vendors, etc. Therefore, the rolling road closures as described above are not sufficient to remove this transport activity from commerce.

Section 171.1(d)(5) provides an exception from the HMR to the "[t]ransportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a Federal, state, or local government employee solely for noncommercial Federal, state, or local government purposes." Any Federal, state, or local government employee transporting hazardous material for a commercial and/or non-governmental purpose would be subject to the HMR. In addition, contractors are not covered by § 171.1(d)(5) and the HMR applies to any transportation of a hazardous material by a contractor. In your scenario, DOE contractors are participating in the transportation activity you describe. Therefore, the applicable requirements of the HMR (such as packaging, labeling, marking, shipping papers, and placarding) apply as long as the requirements for no other exceptions are met.

The analysis in the Denny Letter is consistent with both §§ 171.1(d)(4) and 171.1(d)(5). Therefore, the activity you describe is not consistent with the criteria set forth there.

I hope this information is helpful. To the extent that there has been any confusion related to past agency guidance, we hope this clarifies the issue. Please contact this office if you have any additional questions.

Sincerely,



Joseph Solomey,
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