



U.S. Department
of Transportation

Research and
Special Programs
Administration

Office of the
Chief Counsel

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

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Rebekah E. Bell, Esq.
Assistant General Counsel
Lockheed Martin Energy Systems, Inc.
P.O. Box 2003, Building K-1001, MS 7155
Oak Ridge, Tennessee 37831-7155

Dear Ms. Bell:

I am writing in response to your July 9, 1997 letter requesting an interpretation regarding the applicability of Federal Hazardous Materials Transportation Law (Federal hazmat law), 49 U.S.C. 5101 *et seq.* and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171- 180, to the movement of hazardous materials within the site boundaries of the Oak Ridge National Laboratory (ORNL).

You indicate that Lockheed Martin Energy Research Corporation (LMERC) operates ORNL under contract with the U.S. Department of Energy (DOE) and that LMERC transports hazardous materials within the facility. You state that there are several on-site roads which are not used by the general public but which are accessible from the main public road. You also note that these on-site roads do not provide access to any attractions that might be of interest to the public. Discussions with LMERC staff indicate that these roads are not "through" roads the public can use to drive through the site. Furthermore, you state that ORNL has constructed gates and posted guards at the entrance to the on-site roads to prevent public access; posted signs reading, "No trespassing," "Closed to Public - For US-DOE Official Use Only," and "Entrance for Official Business Only," and established regular security patrols. Because of reduced funding, you indicate that LMERC is contemplating removing the guards and gates from the entrances to the facility; however, the signs will remain in place and regular security patrols will continue.

In reviewing an April 23, 1991 interpretation letter issued to DOE by this office, you question whether removing the guards and gates will cause the on-site movement of hazardous materials at ORNL to fall under the requirements of the HMR. The April 23 interpretation letter states, "If a road is used by members of the general public (including dependents of Government employees) without their having to gain access through a controlled access point,

transportation on (across or along) that road is in commerce. On the other hand, if access to a road is controlled at all times through the use of gates and guards, transportation on that road is not in commerce." Based on the information contained in your letter, removing the guards and gates from the access roads into the ORNL facility will not cause the on-site movement of hazardous materials to be regulated under the HMR, because the road is not used by members of the general public. Furthermore, signs and security patrols are in place to protect against trespassers.

Federal hazmat law and the HMR apply only to the transportation of hazardous materials in commerce. See 49 U.S.C. 5101. Consequently, DOE and its contractors are required to comply with the HMR only when they offer for transportation or transport hazardous materials in commerce. DOE transportation of hazardous materials, by DOE personnel, in DOE vehicles, is not subject to the HMR because it is presumably for a governmental purpose and, therefore, not in commerce. Transportation of hazardous materials by a Government contractor must be looked at more closely to determine whether or not it is in commerce and, therefore, regulated under the HMR.

Transportation by Government contractors on, across or along roads outside of Government property generally is considered to be transportation "in commerce." On the other hand, transportation by a Government contractor, on Government property where public access is controlled during the movement of hazardous materials or precluded altogether, is not. In the case of ORNL, the public does not use the on-site roads at the facility, there are no attractions that would be of interest to the general public, signs indicate that access to the facility is restricted, and there are regular security patrols. In addition, even though the public does not normally use the on-site roads, LMERC has taken sufficient precautions to preclude unauthorized access to the facility. Consequently, LMERC's on-site transportation of hazardous materials is not considered transportation "in commerce" and is not regulated under the HMR.

If you need further clarification concerning this matter, please do not hesitate to contact me again.

Sincerely,



Edward H. Bonekemper, III
Assistant Chief Counsel for
Hazardous Materials Safety and
Research & Technology Law