



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

August 4, 2022

Mr. Justin Lacy
336 S. Taylor Ave.
Essex, MD 21221

Reference No. 22-0020

Dear Mr. Lacy:

This letter is in response to your March 25, 2022, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the placarding of hazardous materials. In your email, you state that you work for an environmental cleanup company that pumps out fuel tanks at various customer sites for residential properties and businesses. You also state that after you pump out and clean these customer fuel tanks, you often transport—in a vacuum truck—mixtures of either gasoline or diesel fuel mixed with water used to clean out the fuel tanks.

You ask whether these return loads—gasoline or diesel fuel mixed with water—are considered hazardous materials and require placarding. You further state that it has been your company's practice not to placard these types of return loads because they have been considered “recycled waste” or “gassy water.” Lastly, you state that the maximum capacity of the tank on your vacuum truck is more than 119 gallons—therefore meeting the definition of a “bulk packaging” in § 171.8 of the HMR. You ask whether these return loads—of either gasoline or diesel fuel mixed with water—are considered hazardous materials and require placarding.

In accordance with § 173.22 of the HMR, the shipper must properly class and describe a hazardous material. This Office does not perform the function of classifying or describing a hazardous material. However, it is the opinion of this Office that the recovered return materials (i.e., “recycled waste” or “gassy water”) you describe in your email may continue to meet the defining criteria of a Class 3 flammable liquid, in accordance with § 173.120.

The gasoline and/or diesel fuel does not mix with water and may retain their physical properties that make them hazardous materials under the HMR—including the respective flash points of gasoline and diesel fuel. In addition, the capacity of the tank on your vacuum truck is more than 119 gallons—therefore meeting the definition of a “bulk packaging” in § 171.8 of the HMR. In this scenario, the recovered return materials would be subject to the placarding requirements of Subpart F of Part 172 of the HMR. Since the recovered return materials may require placarding,

as described under this scenario, the motor vehicle driver would need a commercial driver's license that is properly endorsed in accordance with 49 CFR 393.93 of the Federal Motor Carrier Safety Regulations.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Larson

22-0020

From: [Foster, Glenn \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#); [Hillman, Kenetha CTR \(PHMSA\)](#)
Subject: FW: Fw: J. J. Keller & Associates - Placarding
Date: Wednesday, March 30, 2022 9:19:00 AM

Alice and Kenetha,

Can one of you have the below inquiry checked in as a request for a LOI and assign it to the next Specialist in the rotation, please?

Thanks,
Glenn

From: Bomgardner, Paul (FMCSA) <paul.bomgardner@dot.gov>
Sent: Wednesday, March 30, 2022 8:01 AM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Subject: FW: Fw: J. J. Keller & Associates - Placarding

Hi Glenn:

I think that this question needs to go through PHMSA for an official answer. See below from Justin Lacy. In my mind, I think that the short response is that Justin's concerns are justified, and whether or not the waste that they are transporting is hazardous or not depends on the flashpoint of the mixture. They would have to test the materials according to 49 CFR Sections 173.120 and 173.121. Plus, they need to check on the exceptions for Class 3 materials in Section 173.150.

But, I might be off the mark, so I thought that I would send to you guys.

Regards,
Paul

From: Williams, Crystal (FMCSA) <Crystal.Williams@dot.gov>
Sent: Wednesday, March 30, 2022 7:44 AM
To: Bomgardner, Paul (FMCSA) <paul.bomgardner@dot.gov>
Subject: FW: Fw: J. J. Keller & Associates - Placarding

Hi Paul!

Please see the question below. It's about placarding and I think may belong to you guys. If not please let me know – thanks!!

Crystal

From: Baczara, Bohdan (OST) <Bohdan.Baczara@dot.gov>

Sent: Friday, March 25, 2022 10:47 AM
To: Williams, Crystal (FMCSA) <Crystal.Williams@dot.gov>; Price, Bryan (FMCSA) <bryan.price@dot.gov>
Subject: FW: Fw: J. J. Keller & Associates - Placarding

Good morning,

I think this belongs to FMCSA. If so, can you forward to the appropriate office for response? Thx.

From: Justin Lacy <justinlacy@gmail.com>
Sent: Friday, March 25, 2022 10:22 AM
To: ODAPCWebMail <ODAPCWebMail@dot.gov>
Subject: Fwd: Fw: J. J. Keller & Associates - Placarding

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I am forwarding this email to provide understanding my questions regarding these circumstances. I have reached out to a few different reputable resources but have not been able to get a response that addresses this. This circumstance is a very normal and popular procedure within the industry so my inquiry comes from an honest and desire to understand fully what the protocol should be. I am now reaching out to this agency because it handles transportation issues and regulations. We are located in the Maryland / DC area if this helps.

----- Forwarded message -----

From: Justin Lacy <jlay1@yahoo.com>
Date: Wed, Mar 23, 2022, 6:44 AM
Subject: Fw: J. J. Keller & Associates - Placarding
To: Justin Lacy <justinlacy@gmail.com>

----- Forwarded Message -----

From: Justin Lacy <jlay1@yahoo.com>
To: J. J. Keller & Associates <support+id1721@jkkeller.zendesk.com>
Sent: Wednesday, March 23, 2022, 06:43:12 AM EDT
Subject: Re: J. J. Keller & Associates - Placarding

Has there been any follow up to my more recent attempt at clarification on these matters?

On Saturday, March 19, 2022, 08:53:31 AM EDT, Justin Lacy <jlay1@yahoo.com> wrote:

Thank you for your quick response, I am sorry but it didn't really answer my questions. I am a CDL driver who works for an environmental company. We do a lot of spill clean up and fuel transfers. Often times we are called to pump out homeowner

tanks, fuel stations, dealership tanks, found storage tanks on lots being excavated. My question is for placarded loads over 119 gallons. The popular consensus that seems to run throughout the industry is that recovered diesel is considered a recycled "waste" and therefore does not need to be placarded. An example of this scenario would be I get a call to pump a 1000 gallon diesel tank at a car dealership and we have to pressure wash and clean it, all in the same load so that the tank can be removed and terminated. At the end of the day, my vac truck has 700 gallons of diesel and 152 gallons of wash water mixed. Total 852 gallons. My question is, does this load need to be placarded. When I raise this concern, I am always told that we do not need to placard such loads because they are being classified recycled waste. I believe the reason being is that this could pose an issue for the non haz drivers who transport these materials.

The other half of my question was similar but for gasoline. We often pump and transport loads of gasoline from fuel stations. Many times it could be mostly water but some gas mixed in. I could pump 100 gallons of water and then 50 gallons of gas. In this case the popular consensus is to transport it as "gassy water" to avoid the placarding. All of these loads are also carried under a "non hazard" waste manifest for transport, to which I have also raised questions about. My arguments have always been to placard these loads because oils separate to the top of the loads and the volume is just the same. Beings that the vapors emit from the top of the load still, resulting in the same circumstances. I know this is a lengthy response but I have been concerned about this practice since I have been in the industry when I started more than 15 years ago. I really appreciate your time and consideration towards my concerns. I have asked around within the industry and most answers come from people who do not know the nuances of the regulations or have an interest in the company's side of continuing doing business the way they have always done it.

On Friday, March 18, 2022, 09:21:11 AM EDT, Heather N. (J. J. Keller & Associates) <support@jjkeller.zendesk.com> wrote:

Hi jlay1,

Our subject matter experts have responded to your Expert Help request; you can find the response below. If you have follow-up questions or comments, please feel free to reply to this email.



Heather N. (J. J. Keller & Associates)

Mar 18, 2022, 8:21 AM CDT

Hi Justin,
Thanks for your question.

A container or a tank is non-bulk if the *capacity* is 119 gallons or less. A container or a tank is considered bulk if its *capacity* is greater than 119

gallons.

For the gasoline, it will depend on the capacity of the tank and whether it has been "sufficiently cleaned of residue and purged of vapors to remove any potential hazard" as required in 172.514. This [PHMSA interpretation](#) speaks to what that means. If in bulk and it has been cleaned and purged, no placards required. If not, then it is treated as if it was full and would require placards.

If in non-bulk, then there are two exceptions that might come into play – 172.504(d), which says, "(d) Exception for empty non-bulk packages. Except for hazardous materials subject to § 172.505, a non-bulk packaging that contains only the residue of a hazardous material covered by Table 2 of paragraph (e) of this section need not be included in determining placarding requirements." And also the general placarding exception in 172.504(c), which says that placards aren't required for Table 2 materials less than 1,001 pounds gross weight. Placards likely not required in this situation.

Here's the regulation regarding placarding and whether a bulk package requires placards if it contains residue--

[§ 172.514 Bulk packagings.](#)

(a) Except as provided in [paragraphs \(c\)](#) and [\(d\)](#) of this section, each person who offers for transportation a bulk packaging which contains a hazardous material, shall affix the placards specified for the material in [§§ 172.504](#) and [172.505](#).

(b) Each bulk packaging that is required to be placarded when it contains a hazardous material, must remain placarded when it is emptied, unless it –

(1) Is sufficiently cleaned of residue and purged of vapors to remove any potential hazard;

(2) Is refilled, with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous; or

(3) Contains the residue of a hazardous substance in Class 9 in a quantity less than the reportable quantity, and conforms to [§ 173.29\(b\)\(1\) of this subchapter](#).

Regarding the diesel, diesel in a bulk package (a container with a capacity that exceeds 119 gallons) requires placards. If diesel is in a non-bulk container (119 gallons or less), it may be able to be reclassified as a combustible liquid. Combustible liquids in non-bulk packagings are exempt from all hazardous materials regulations. This article we have helps explain diesel fuel requirements – [When does diesel fuel require placards?](#)

I hope this information helps clarify the requirements! Please let me know if you have any other questions.

Heather – J. J. Keller Subject Matter Expert

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