U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

OCT 5 1995

Mr. Lawrence W. Bierlein, Esq.
Swidler & Berlin
3000 K Street, N.W. Suite 300
Washington, D.C. 20007-5116

Dear Mr. Bierlein:

This responds to your request for clarification of the provisions of § 172.101(c)(11) as they relate to hazardous wastes, particularly those that may be corrosive liquids.

Section 172.101(c)(11) provides, in part, that a hazardous waste may be assigned a tentative shipping name, hazard class and identification number, based on the shipper's tentative determination according to defining criteria in the regulations, hazard precedence prescribed in § 173.2a, and the shipper's knowledge of the material. You express concern that previous letters issued by this office may be misunderstood to imply that a shipper may determine the hazard class and packing group for a material based on limited, inadequate information.

Although a "tentative determination" is permitted, a shipper must have some information regarding the properties of a waste material to make such a determination. A pH value may indicate that a specific aqueous solution is an acid or a base, but may be inadequate for making classification and packing group determinations unless the shipper has additional material-specific information.

As indicated in our December 29, 1994 letter to you on this subject, a material in aqueous solution with a pH of 2 or less, or 12 or more, may be considered a corrosive material. You object to our further statement that a pH value may be of some use in determining the packing group of an aqueous solution. The basis for this statement is that, in general, an extremely high or low pH is indicative that a solution poses a greater corrosivity hazard than a solution with a less extreme pH value; a shipper may have information about pH values for various concentrations of a solution which can be used to determine packing group.

You also object to our statement that a pH value for an aqueous solution may be of some use in determining that a material is not regulated. A pH value may suggest, but is not determinative, that a material is not corrosive. As indicated in the attached newsletter article, if a reasonable doubt exists as to the classification of a waste material, it is better to ship the material as subject to the regulations on a tentative basis, until classification is determined on a positive basis.

As applied to hazardous waste, § 172.101(c)(11) was added in the early 1980's to permit the offering and transportation of hazardous waste based on a tentative classification. It was intended to facilitate the movement of hazardous waste from a spill site or waste site by avoiding delays and costs associated with sending materials off-site for testing prior to their being shipped for disposal, with the understanding that a shipper would have sufficient information about the properties of a material (obtained through documentation or on-site testing) to make this tentative determination. It was not meant to apply to long-term operations, as you suggest is being done. We request any specific information which you would care to provide concerning potential abuse of this provision.

The utility of the § 172.101(c)(11) provision has diminished in recent years because of regulatory changes and improved test methodologies. In order to improve hazard communication, regulatory requirements have been added which necessitate better identification of technical constituents, identification of packing groups and provision of appropriate emergency response information. Mere knowledge that a material may be corrosive is insufficient to satisfy these regulatory requirements. Also, as you are aware, with the advent of *in vitro* test methodologies, it is now practical to make on-site determinations of both corrosivity and packing group for some groups of corrosive materials.

I trust this satisfies your request. If this office can be of further assistance, please contact us.

Sincerely,

Edward T. Mazzullo

Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards