



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

Office of the
Chief Counsel

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

Mr. Frank A. McLellan
Hazardous Waste & Material Coordinator
Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, Wisconsin 54135-0910

APR 13 1999

Dear Mr. Frank McLellan:

I am responding to your January 15, 1999 letter requesting information on whether logging contractors servicing the Menominee Indian Tribe (Tribe) can be permitted to carry more than 119 gallons of diesel fuel without using a specification tank. I apologize for my delay in responding to you and I hope this delay has not caused you any inconvenience.

The Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, define a liquid bulk packaging as a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has a maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid. 49 C.F.R. § 171.8. The bulk packaging requirements for diesel fuel, which are found in § 173.242, authorize only certain types of specification bulk packaging to be used. Therefore, it is not possible under the HMR for a logging contractor to transport more than 119 gallons of diesel fuel without using one of the specification packagings authorized in § 173.242.

The logging contractor can request that it be granted an exemption from the regulations. However, in order for the Research and Special Programs Administration (RSPA) to consider granting an exemption, the logging contractor will have to show that its proposed exemption meets the level of safety provided by the HMR or is consistent with public interest. The requirements for requesting an exemption are contained in 49 C.F.R. § 107.105.

I hope this information is helpful. If you have any questions, you may contact Donna O'Berry or me at the above address or at (202) 366-4400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Bonékemper", followed by a horizontal line.

Edward H. Bonékemper, III
Assistant Chief Counsel for
Hazardous Materials Safety