



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

October 16, 2024

Ben Smith
Sr. Multimodal DG Specialist
ProteQ
2325 Dulles Corner Blvd, Ste 725
Herndon, VA 20171

Reference No. 24-0034

Dear Mr. Smith:

This letter is in response to your May 17, 2024, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to lithium batteries, particularly those shipped as damaged, defective, and recalled (DDR) cells or batteries as prescribed in § 173.185(f). You ask whether lithium batteries treated as described in the scenario below would still be considered DDR lithium batteries. Specifically, you describe a lithium battery that has been processed—prior to transportation—to no longer have the potential to:

- Be electrically charged.
- Hold any electrical charge or be capable of being charged.
- Be electrically connected to equipment (e.g., electrical plugs have been destroyed).
- Hold electrolyte, flammable, or explosive liquids, or gases.
- Have the operational ability to provide power to equipment.
- Present a dangerous evolution of heat, fire, or be short circuited.

You further add that the batteries have been tested in accordance with Resource Conservation and Recovery Act (RCRA) testing (Toxicity Characteristic Leaching Procedure (TCLP), and ignitability) with results showing no flash point below 140 degrees F, and no TCLP metals detected.

As specified in § 173.22 of the HMR, it is the shipper's responsibility to properly class and describe a hazardous material in accordance with Parts 172 and 173 of the HMR. This Office generally does not perform that function. However, it is the opinion of this Office that the lithium batteries processed in the manner you describe would not be considered a battery nor a DDR battery. A lithium battery or cell is not subject to the HMR, if it does not meet the definition of a

battery or cell in Section 38.3.2.2 of the UN Manual of Tests and Criteria. Once again, it is the responsibility of the shipper to determine whether any materials or contents that remain meet any HMR criteria for hazardous materials.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Dirk Der Kinderen". The signature is fluid and cursive, with a prominent initial "D".

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

From: [INFOCNTR \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#)
Cc: [Hazmat Interps](#)
Subject: FW: Request for Letter of Interpretation of the HMR § 173.185(f)
Date: Friday, May 24, 2024 4:50:01 PM
Attachments: [Request for Letter of Interpretation of the HMR § 173.185\(f\).msg](#)

Hi Alice,

Please see the attached interpretation request.

Let me know if you need anything.

Regards,

-Breanna

-----Original Message-----

From: Ben Smith <bsmith@proteq.com>
Sent: Friday, May 17, 2024 8:11 AM
To: PHMSA HM InfoCenter <PHMSAHMInfoCenter@dot.gov>
Cc: Robert Ashton <rashton@proteq.com>
Subject: Request for Letter of Interpretation of the HMR § 173.185(f)

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From: [Ben Smith](#)
To: [PHMSA HM InfoCenter](#)
Cc: [Robert Ashton](#)
Subject: Request for Letter of Interpretation of the HMR § 173.185(f)
Date: Friday, May 17, 2024 8:11:27 AM
Attachments: [image001.jpg](#)

To whom it may concern:

When the regulatory language of §173.185(f) refers to damaged, defective, and recalled cells, or batteries, for USDOT transportation purposes, if a lithium chemistry battery has been processed – prior to transportation – to no longer have the *potential to*:

- Be Electrically charged
- Not hold any electrical charge, and can no longer be charged
- Be electrically connected to equipment (electrical plugs have been destroyed)
- Hold no electrolyte, flammable or explosive liquids or gases
- Is destroyed beyond use as a battery, and/ or cell, so as not have the operational ability to provide power to equipment, and,
- Does not present a dangerous evolution of heat, fire, and cannot be short circuited, and;
- Has been tested IAW RCRA testing (TCLP, and ignitability) with results showing no FP below 140 degrees F, and no TCLP metals detected:

Then, in the opinion of PHMSA, do these pretreated and processed non-batteries no longer meet definition of a cell or battery?

V/R,

Ben Smith

Sr. Multimodal DG Specialist • ProteQ

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