



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

AUG 24 1998

Mr. Donald H. Hausmann
T.P.H. Management Service Ltd.
P.O. Box 15845
Houston, Texas 77220

Ref. No. 98-0041

Dear Mr. Hausmann:

This is in response to your letter of April 27, 1998, regarding requirements for applying the third party testing facility marking and the self-certification marking on a package under § 107.402(b)(5) of 49 Code of Federal Regulations (Part 107 - Hazardous materials program procedures). Specifically, you ask whether a third party lab may apply a "+" mark on a packaging certification even if the third party lab owns stock in the packaging manufacturing company or is affiliated with the management.

The intent of the requirement for the statement "the applicant will perform its functions independent of manufacturers and owners of the packagings", as required by § 107.402(b)(5), is to present to DOT a clear statement that there will be no conflict of interest in the work being performed by an applicant. Any ownership of a test lab by a manufacturer or packaging owner or, alternatively, ownership of a packaging or a packaging manufacturer by a test lab, would bring into question the level of independence of the test lab and would introduce the possibility of conflict of interest.

Thus, prior to granting an approval to operate as a test lab, RSPA would examine whether the applicant can operate independent of those who have a financial interest in the packaging test results. One portion of this evaluation would involve examining the applicant's ownership structure, including ownership of the test lab and the applicant's interest in any manufacturing facility.

I hope this answers your inquiry. If you need further assistance, please do not hesitate to contact us.

Sincerely,

for Thomas G. Allon

Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards



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Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards

107.402

T.P.H. Management Services Ltd.

P.O. Box 15845

Houston, Texas 77220

713.923.9300

April 27, 1998

DOT/RSPA/OHMS
EXEMPTIONS & APPROVALS

98 MAY -5 PM 3:10

Ms. Christine E. Whitney
U.S. Department of Transportation
400 7th Street SW
Washington, DC 20590

Dear Ms. Whitney:

Please consider this letter as a request for a written response to clarify section 107.402, b.5 "a statement that the applicant will perform its function independently of manufacturers and owners of the packaging concerned." All questions are addressing the ability to apply the third party testing facility marking on the package, not the self certification marking.

The statement has two different parts, first with regard to "perform its function independently of manufacturers". I interpret this part as stating independent of manufacturers as different facilities and employees which are not similar to the two entities. Does this include independent contractors which may oversee one or more of the two entities?

The second part of the statement addresses "owners of packaging concerned". Does this mean someone can not own any stock in both a packaging concern and the testing facility? Can someone own stock in one company and not a controlling interest in the other? If so, what portion of stock in either company maybe owned? Can someone own stock in a packaging manufacturer and own stock in another company which owns stock in the testing facility?

If no stock of a packaging manufacturer can be owned by the owners of the testing facilities, several different questions are raised. Many people own stock in public companies, over the counter stocks and private placement stocks. Does this mean an owner of a testing facility cannot test packages for a major company even if they own one share of the stock? What about mutual funds which may have different stocks in its portfolio from one day to the next? Do the owners of the testing facility have to check with mutual fund portfolios before accepting contracts to do testing?

I realize in all cases the testing facility could apply their self certification marking to the package. I am interested in placing the third party D.O.T. approved testing facility marking on the package.

Respectfully,



Donald H. Hausmann