



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

JAN 15 2007

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Mr. Dave Romanin
115 Potomac Place
Oregon, WI 53575

Ref. No. 07-0226

Dear Mr. Romanin:

This is in response to your request for clarification of the requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) pertaining to the verification of ownership of a packaging. Specifically, you ask whether the HMR include requirements related to establishing ownership of a cylinder.

Enclosed is a letter of interpretation (Ref. No. 01-0074) issued by this office that addresses the issue of ownership of a packaging. As stated in the letter, a permission slip from a person representing himself as the owner of the packaging is sufficient proof of ownership, provided the person who is testing and filling the packaging does not have knowledge or reason to believe otherwise.

You may want to write a letter of authorization or obtain a transfer of ownership letter from the seller and present it to the company you wish to test and fill your cylinder. However, if the person filling and testing the cylinder is not satisfied, that person may refuse to provide the service.

I hope this information is helpful. Please contact this office if you have further questions.

Sincerely,

Hattie L. Mitchell, Chief
Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Enclosure

MC Intyre
§173.301
Cylinders
07-0226

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Wednesday, November 28, 2007 1:13 PM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Interpretation of ownership in 173.301 paragraph E

Carolyn,

Can you put this through as a formal request for interpretation? Thanks.

Erin

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

From: Dave Romanin [mailto:dave.romanin@promega.com]
Sent: Wednesday, November 28, 2007 10:47 AM
To: INFOCNTR <PHMSA>
Subject: Interpretation of ownership in 173.301 paragraph E

Hi,

I recently bought an air cylinder at a rummage sale and I am having challenges getting it tested and filled. Gas companies are requesting ownership papers.

I spoke with Mike Stevens about the interpretation of 173.301 paragraph E and he indicated that as far as the DOT is concerned, possession is ownership.

Could you please send me the DOT's interpretation of ownership of an compressed gas cylinder as it applies to this regulation.

Thank you,
Dave Romanin

608-516-5806
115 Potomac Pl
Oregon, WI 53575



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

JUN 25 2001

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

Mr. David Hosted
Director, Safety & Compliance
San Diego Welders Supply
1180 N. Marshall Avenue
El Cajon, CA 92020

Reference No.: 01-0074

Dear Mr. Hosted:

This is in response to your inquiry for clarification on the provisions for cylinder ownership in 49 CFR 173.301(b) which reads: "A container charged with compressed gas must not be shipped unless charged by or with the consent of the owner of the container." Your questions for verifying ownership are paraphrased and answered as follows:

- Q1. How do acquisitions, corporate purchases, take-overs, and mergers affect the process of cylinder ownership identification?
- A1. We recognize that with companies terminating operations, being bought by larger companies, changing policy on deposit and consumer purchasing of containers, each geographic area and market is a collage of ownership systems. The intent of § 173.301(b) is to enhance safety by assuring a degree of control over cylinders in a person's ownership, particularly, the environment and previous service in which a cylinder has been used. Certain cylinder requalification provisions in § 173.34(e) are limited to cylinders used exclusively in certain compressed gas service. For example, § 173.34(e)(10) permits cylinders in certain specifically named gas services to be given an external visual inspection instead of a pressure retest, and paragraph (e)(11) permits under certain conditions for cylinders to be retested every 12 years instead of every 5 years. Cylinder owners can take advantage of these less restrictive provisions provided they are knowledgeable of the type of service the cylinders have been in since the cylinders' last periodic requalification.
- Q2. Who has responsibility for identification - the person filling the cylinder or the person who offers the cylinder for filling?
- A2. The filling of a cylinder without the consent of the owner is not in itself a violation of § 173.301(b). The violation occurs when the charged cylinder is offered for transportation in commerce. Therefore, § 173.301(b) addresses the person who offers the charged cylinders for transportation. If the refiller is also the shipper of the cylinders, then the question of whether or not the refiller may be held accountable in a particular case would depend on the facts of that case.

The regulations are silent as to how cylinder ownership is established. Section 173.301(b) also does not prohibit the refill or exchange of cylinders with customers. For propane and other commonly used gases, a common acceptable practice is to exchange cylinders with customers (users) in place of refilling the customers' own cylinders.

Q3. Does a letter of authorization presented to the refiller by the person in possession of the cylinder constitute "owner consent"?

A3. A permission slip signed by a person representing himself, and who you reasonably believe to be the owner of the cylinder would be sufficient proof under § 173.301(b) that permission to fill the cylinder had been granted. However, you can be held accountable in a given case if you fill and ship a cylinder given to you by a person who you know is not the owner of the cylinder, even if that person signs the permission slip.

I trust this information is helpful.

Sincerely,



Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards