



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

JUL 21 2008

Ms. Pamela Smith
Montvale Cares, Inc.
29 Hickory Hill
Montvale, New Jersey 07645

Ref. No.: 08-0162

Dear Ms. Smith:

This is in response to your June 6, 2008 letter addressed to Ms. Colleen Abbenhaus, Chief, Eastern Region, Office of Hazardous Materials Enforcement, and to this Office, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipping paper retention requirements. Your scenario is based on a company that receives UN 1791, Hypochlorite solutions, 8, PG II, for use in its water storage tank. Specifically, you ask if the company is required to maintain copies of the shipping papers used for the delivery of the hypochlorite solution.

It is unclear from the information contained in your letter if the subject company also transports the Class 8, PG II material to its facility. The shipping paper retention requirements contained in the HMR apply to each person who offers a hazardous materials for transportation (§§172.200(a) and 172.201(e)) and each person who accepts a hazardous material for transportation in commerce (§ 177.817(f) for highway transportation). The shipping paper retention requirements do not apply to a company that receives Class 8 material for use at its facility. In addition, if the subject company transports the Class 8 material for use at its facility, the shipment may qualify under the materials of trade (MOTS) exception if the material is contained in a packaging having a gross mass or capacity not over

30 kg (66 pounds) or 30 L (8 gallons). If the applicable requirements in § 173.6 are met, other requirements in the HMR (including shipping papers) do not apply. See the MOT provisions in § 173.6.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Mitchell', with a long horizontal flourish extending to the right.

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

cc: Ms. Colleen Abbenhaus
Chief, Eastern Region
Office of Hazardous Materials Enforcement

MONTVALE CARES INC.

29 Hickory Hill
Montvale, New Jersey 07645

June 6, 2008

VIA FACSIMILE (609) 989-2277 AND REGULAR MAIL

Chief Colleen Abbenhaus
Office of Hazardous Materials Enforcement - Eastern Region
820 Bear Tavern Road, Suite 306
West Trenton, New Jersey 08628

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

**RE: UNITED WATER NEW JERSEY (PD 95 PUMPING STATION)
BLOCK 1804, LOT 5 MONTVALE, NEW JERSEY
-Shipping Records of Sodium Hypochlorite (UN1791)**

Dear Ms. Abbenhaus and Mr. Mazzulo:

Please be advised that Montvale Cares Inc. is a New Jersey Nonprofit Corporation with over two hundred members that is concerned with the health, safety, and welfare of the residents of their community. This letter is requesting direction from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA") concerning potential code violations regarding the shipment of sodium hypochlorite by United Water New Jersey.

United Water New Jersey has submitted an application to the Borough of Montvale Zoning Board of Adjustment for the construction of a water treatment and pumping station on a residentially zoned property in which Montvale Cares Inc. is objecting to. United Water is the owner of said property and is proposing to construct a pumping and treatment facility adjacent to a water storage tank presently existing on site. Said application is currently under review by the Montvale Zoning Board of Adjustment which is holding ongoing hearings in furtherance of same.

An integral part of United Water's Application involves the addition of a liquid sodium hypochlorite feed and storage tank. Sodium hypochlorite is classified as a "hypochlorite solution" under "hazard class 8" and is identified as "UN1791." As such, it is a regulated hazardous material and is subject to the applicable placarding and shipping requirements pursuant to Title 49 of the Code of Federal Regulations.

The Applicant presently maintains that multiple deliveries of sodium hypochlorite have been made to the water storage tank currently on site. Specifically, the Director of Operations for

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Satterthwaite

§ 172.201(e)

§ 177.817(f)

Shipping Papers

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United Water New Jersey, Gary Harstead, testified at the January 30, 2008 Montvale Zoning Board of Adjustment meeting that deliveries have been made to the subject site several times a year in the past. Mr. Harstead stated when questioned by a concerned citizen:

Mr. Santarelli: "How often do you treat it presently?"

Mr. Harstead: "Perhaps several times a year"

Mr. Santarelli: "Several times a year and then it'll go. . ."

Mr. Harstead: "No it's several; times a year now"
(Montvale ZBA Meeting: 1/30/08; p.59, lines 13-21)

Mr. Santarelli: "Presently, you treat the water, you said several times a year. Is that right? With hypochlorite presently?"

Mr. Harstead: "Yes"
(Montvale ZBA Meeting: 1/30/08; p.60, lines 12-15)

Mr. Harstead expounded on his initial statements concerning the deliveries of sodium hypochlorite when cross examined by opposing counsel, Mr. Mayland, at the January 30, 2008 Zoning Board meeting:

Mr. Harstead: "Well like I said, it could be, *you know about four times a year.* What should happen is, during the year, generally from I'd say, you know, from late fall through mid-summer, the chlorine level degradation is not an issue at this part in our system or most parts of our system. The problem is from, perhaps August through earlier October, mid-October. The water in the reservoir is warmer and therefore the chlorine dissipates quicker.

There are certain times and conditions where we have noticed when we've taken sample that the chlorine level up here in Montvale is approaching the .2 level. *At that point, we would take action. No, it does not happen all the time but it does happen.*"

Mr. Mayland: "But there is a record the last time this happened. Correct?"

Mr. Harstead: "I assume there's a record somewhere, yes."

Mr. Mayland: "And y our company can provide that, I assume?"

Mr. Harstead: "Yeah"
(Montvale ZBA Meeting: 1/30/08; p.87 line 11- p.88 line 6)) (emphasis added)

The Applicant has maintained throughout the subject proceedings that sodium hypochlorite deliveries were made to the Montvale site, however has stated they do not maintain the records of such deliveries. Specifically, at the March 26, 2008 Montvale Zoning Board of Adjustment meeting, the applicant's attorney, Mr. Daniel Gielchinsky, stated when questioned by the objectors' counsel Mr. Strasser:

Mr. Strasser: "The other point that was discussed, the chlorine delivery rerecords."

Mr. Gielchinsky: "We have ascertained we do not have them"
(Montvale ZBA Meeting: 3/26/08 p. 53, lines 18-23)

Mr. Gielchinsky further stated in response to objectors inquiries:

Mr. Strasser: ". . . The applicant, just for the record, is saying there is no record at all"

Mr. Gielchinsky: "Correct"

Mr. Strasser: "—as to this issue?"

Mr. Gielchinsky: "Correct."

Mr. Strasser: "United Water does not maintain records regarding the chlorine level and issues which were requested?"

Mr. Gielchinsky: "We can move on, Mr. Strasser."
(Montvale ZBA Meeting: p.55, lines 2-12)

Numerous requests have been made to the Applicant to supply the delivery records of said sodium hypochlorite deliveries, however, the Applicant has responded by stating it is not in possession of any such records. Montvale Cares Inc. is not aware if any such records ever existed. Furthermore, Montvale Cares Inc.'s legal representation, Strasser & Associates, P.C., alerted the Applicant that pursuant to title 49 of the Code of Federal Regulations it is mandated by law to maintain such records, however, the Applicant summarily dismissed said request and stated that the statute does not apply to its transportation of the hazardous material.

For your convenience please find annexed hereto as "Exhibit A" a copy of our counsel's correspondence directed to the Applicant's attorney dated April 30, 2008 addressing the aforementioned subject matter. Additionally, annexed hereto as "Exhibit B" please find the Applicant's response dated May 2, 2008 concerning same. Moreover, annexed hereto as "Exhibit C" please find our counsel's letter dated May 9, 2008 addressing the potential code violations

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made by United Water New Jersey. It should be noted that a lengthy discussion of the aforementioned correspondences took place during the May 14, 2008 Zoning Board of Adjustment meeting. Full transcripts of the proceedings before the Montvale Zoning Board of Adjustment to date can be provided upon request.

Please advise Montvale Cares Inc. if United Water New Jersey is in violation of the applicable federal regulations and what the consequences of said violations will be.

Thank you for your time and anticipated cooperation regarding the within, and should your office require any further documentation or would like to discuss this matter in more detail please do not hesitate to contact me.

Sincerely,
MONTVALE CARES INC.

PAMELA SMITH
President, Montvale Cares Inc.