



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAR 18 2019

Timothy W. Wiseman
Partner
Scopelitis, Garvin, Light, Hanson & Feary, PC
10 West Market Street, Suite 1400
Indianapolis, IN 46204

Reference No. 18-0124

Dear Mr. Wiseman:

This letter is in response to your September 24, 2018, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the requirement to obtain an explosive classification approval (EX approval). Specifically, you describe two scenarios in which your client manufactures a jet perforating gun (JPG) and holds an EX approval classifying the JPG as either a 1.4D or 1.1D explosive, depending on the exact configuration.

Scenario 1: Your client would ship a partially assembled JPG to a customer. Your client would provide training and detailed instructions on the assembly process to the customer to allow them to assemble the explosive to the tested configuration. The customer would then complete assembly of the JPG and transport the device for use.

Scenario 2: Your client would transport fully assembled JPGs to their customer. The customer would make no modifications to the JPG and transport the device for use.

We have paraphrased and answered your questions as follows:

- Q1. Regarding Scenario 1, you ask if your client's customer needs their own EX approval to transport the JPG after assembling it per your client's instructions.
- A1. The answer is yes. In the scenario you have described, your client's customer has produced a new explosive, as defined in § 173.56(a). All new explosives must be examined, classed, and approved in accordance with § 173.56.
- Q2. Regarding Scenario 1, you ask if your client's customer may rely on your client's test report to obtain an EX approval.
- A2. The answer is no. Your client's customer may not submit the test report that was issued to your client for the required EX approval. EX approvals are not granted on a "party

status” basis to persons who have not previously produced the explosive. The JPG design, as assembled by your client’s customer, must be submitted for review by an approved explosive test laboratory as provided in § 173.56(b).

Q3. Regarding Scenario 2, you ask if your client’s customer could transport the fully assembled JPG under your client’s EX approval.

A3. The answer is yes. Provided your client’s customer does not modify the explosive in any way, the assembled JPG may be transported in accordance with the existing EX approval.

Additionally, please note that in Scenario 1 your client must ensure that the pieces of the partially assembled JPG containing energetic materials have been appropriately examined, classed, and approved for transportation, since they would be considered new explosives compared to the fully assembled JPG.

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

Sincerely,

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

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

Patrick
Approvals
18-0124

Dodd, Alice (PHMSA)

From: Foster, Glenn (PHMSA)
Sent: Tuesday, September 25, 2018 9:37 AM
To: Dodd, Alice (PHMSA); January, Ikeya CTR (PHMSA)
Cc: Kelley, Shane (PHMSA)
Subject: EX Approval Questions

Alice / Ikeya,

Please log in the inquiry below as a request for a letter of Interpretation and assign to a Specialist.

Thanks,
Glenn

From: Kelley, Shane (PHMSA)
Sent: Tuesday, September 25, 2018 9:35 AM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Subject: Fwd: EX Approval Questions

Can we get this logged in for response please?

From: Fink, William (PHMSA) <william.fink@dot.gov>
Sent: Tuesday, September 25, 2018 9:26 AM
To: Kelley, Shane (PHMSA)
Cc: bwiseman@scopelitis.com; Nicks, Michael (PHMSA); Singh, Harpreet (PHMSA)
Subject: FW: EX Approval Questions

Mr. Kelley,

Can I ask for an Interp. (Asking for formal guidance.)

Bill Fink

From: twiseman@scopelitis.com
Sent: Monday, September 24, 2018 7:45 AM
To: Fink, William (PHMSA) <William.Fink@dot.gov>
Cc: Nicks, Michael (PHMSA) <michael.nicks@dot.gov>; Wiseman, Brandon <bwiseman@scopelitis.com>
Subject: RE: EX Approval Questions

Bill/Michael:

As a follow-up to our communications last week regarding EX approvals for jet perforating guns ("JPGs"), we have a couple of additional questions that we were hoping to run by you before seeking any type of formal guidance from the agency. Specifically, as we discussed last week, our client currently utilizes two approvals to transport the JPGs. The first is classified as NA0494 1.4D (which the client obtained using its own test report) and the second is NA0124 1.1D (which the client obtained through the AESC/IME template and which we understand will be revoked later this year). Both are "with detonator."

Going forward, the client is exploring the possibility of selling its JPGs to customers to use at their own well sites. Specifically, it is exploring two use-cases, one in which it would ship partially assembled JPGs to the customers who would then assemble and load them on their own and transport them to their own sites. In this scenario, our client would plan to provide training and detailed instructions to their customers so that the JPG is assembled and transported per the configuration used in the test report that the client used to obtain its EX approval. Our questions here are (1) would the client's customers need their own EX approval to transport the devices after assembling them per our client's instructions and test report? And (2) if so, could they rely on our client's test report to obtain that approval, or would they instead have to obtain their own testing? We weren't sure if there was some type of expedited approval in the EX context that is similar to the "party status" special permits.

In the second use-case, the client is considering transporting the JPGs fully-assembled to its customers' facilities. The customers would then transport the fully-assembled JPGs to their worksites. Assuming the customers do not modify the JPGs in any way, it is our understanding that they could rely on our client's EX approval in this scenario, but we wanted to confirm this point with you.

Thank you.

Timothy W. Wiseman, Partner
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1400, Indianapolis, IN 46204
twiseman@scopelitis.com | T: 317.637.1777 | D: 317.492.9221

From: Wiseman, Tim
Sent: Tuesday, September 11, 2018 12:56 PM
To: Fink, William (PHMSA) <William.Fink@dot.gov>
Subject: RE: EX Approval Questions

Can I plan on calling you tomorrow afternoon? Perhaps 1 est?

Timothy W. Wiseman, Partner
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1400, Indianapolis, IN 46204
twiseman@scopelitis.com | T: 317.637.1777 | D: 317.492.9221

From: Fink, William (PHMSA) <William.Fink@dot.gov>
Sent: Tuesday, September 11, 2018 10:36 AM
To: Wiseman, Tim <twiseman@scopelitis.com>
Subject: RE: EX Approval Questions

Mr. Wiseman,

Busy at 3:00 to 3:45 today

I'm available all day tomorrow.

William Fink
Transportation Specialist
202-366-1108
William.Fink@dot.gov

From: wiseman [scopelitis.com](mailto:wiseman@scopelitis.com)
Sent: Tuesday, September 11, 2018 9:02 AM
To: Fink, William (PHMSA) <William.Fink@dot.gov>
Subject: RE: EX Approval Questions

Thanks Bill. Unfortunately, I have a meeting out of the office this afternoon beginning at 3. Do you have any availability tomorrow or Thursday?

Timothy W. Wiseman, Partner
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10 West Market Street, Suite 1400, Indianapolis, IN 46204
wiseman@scopelitis.com | T: 317.637.1777 | D: 317.492.9221

From: Fink, William (PHMSA) <William.Fink@dot.gov>
Sent: Tuesday, September 11, 2018 8:38 AM
To: Wiseman, Tim <twiseman@scopelitis.com>
Subject: RE: EX Approval Questions

Mr. Wiseman,

I'm available after 4pm EDT today.

Bill Fink

From: wiseman [scopelitis.com](mailto:wiseman@scopelitis.com)
Sent: Monday, September 10, 2018 5:33 AM
To: Nicks, Michael (PHMSA) <michael.nicks@dot.gov>
Cc: Fink, William (PHMSA) <William.Fink@dot.gov>
Subject: RE: EX Approval Questions

Just following up to see if Mr. Fink would have any available today or tomorrow for a call to discuss. Thanks!

Timothy W. Wiseman, Partner
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1400, Indianapolis, IN 46204
wiseman@scopelitis.com | T: 317.637.1777 | D: 317.492.9221

From: Nicks, Michael (PHMSA) <michael.nicks@dot.gov>
Sent: Thursday, September 6, 2018 8:33 AM
To: Wiseman, Tim <twiseman@scopelitis.com>
Cc: Fink, William (PHMSA) <William.Fink@dot.gov>
Subject: RE: EX Approval Questions

Tim,

I would contact Bill Fink. His email address is william.fink@dot.gov. Let me know if you need anything else.

Regards,

Michael Nicks, MS, CSP, ASP, CHMM, CDGP, OHST
Transportation Specialist

General Approvals and Permits, PHH-31
Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE, East Building, Room E23-447
Washington, DC 20590
Telephone: 202-366-5610
Email: michael.nicks@dot.gov
Website: <https://www.phmsa.dot.gov/hazmat>

From: twiseman@scopelitis.com
Sent: Thursday, September 06, 2018 5:57 AM
To: Nicks, Michael (PHMSA) <michael.nicks@dot.gov>
Subject: EX Approval Questions

Michael,

I have some questions regarding an EX approval for a jet perforating gun used in the oil/gas industry. Do you know who at PHMSA would be best for me to contact?

Timothy W. Wiseman, Partner
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
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