



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

SEP 12 2000

Mr. J. P. Gibbons
President, North American Transportation
Consultants, Inc.
P.O. Box 1404
Hightstown, New Jersey 08520

Ref. No. 00-0235

Dear Mr. Gibbons:

This responds to your letter, postmarked August 21, 2000, requesting clarification of the requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the reuse of plastic drums.

For the most part, your understanding of the HMR requirements, as indicated by the numbered statements and questions in the first part of your letter, is correct. Generally, plastic drums intended for reuse must conform to the requirements for reuse of non-bulk packagings in § 173.28, including requirements applicable to leakproofness tests and marking.

Section 173.28(b)(7) authorizes reuse of packagings, including plastic drums, without leakproofness testing provided the packaging is: (1) refilled with a material that is compatible with the original lading; (2) refilled and offered for transportation by the original offeror; and (3) transported in a transport vehicle or freight container under the exclusive use of the refiller of the package. The exclusive-use transport vehicle may be operated by a private, common, or contract carrier; however, the transport vehicle may not contain any material offered for transportation by any person other than the filler of the drums. Under the scenarios you describe in questions 6 and 7 of your letter, the plastic drum may be refilled and offered for transportation without leakproofness testing. However, the exception from leakproofness testing in § 173.28(b)(7) does not apply to the scenario described in question 8 of your letter because storage at a public warehouse, whether in-transit or otherwise, breaks the continuity of closed-loop distribution systems that served as the model for that provision in the HMR.

You ask whether a distribution facility is considered the original offeror or filler for purposes of the exception in § 173.28(b)(7) when a plastic drum is offered for transportation from the distribution facility. The answer is yes, provided that the distribution facility is operated by the same person who



000235

173.28

refilled the package. Note that in order to utilize the exception, the transport vehicle must be under the exclusive use of the person who refilled the package. If, in addition to the plastic drum, the transport vehicle contains materials offered by a person other than the refiller of the package, as is the case in the scenario you describe in question 11, then the transport vehicle is not under the exclusive use of the refiller, and the exception from leakproofness testing in § 173.28(b)(7) does not apply.

You report that recent actions taken by the Environmental Protection Agency (EPA) except certain spent hazardous materials from Hazardous Waste Manifest requirements in 40 CFR part 262. Since EPA-excepted spent materials are not hazardous wastes as that term is defined in § 171.8 of the HMR, they may not be offered for transportation or transported to a re-processor under the provisions of § 173.12(c). If you believe that the exception in § 173.12(c) should also apply to spent hazardous materials that do not meet the HMR definition for hazardous waste, it would be helpful if you were to provide support for that proposal by filing a petition for rulemaking in accordance with 49 CFR 106.31.

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

Sincerely,

Handwritten signature of Edward T. Mazzullo in cursive script.

Edward T. Mazzullo
Director, Office of Hazardous Materials Standards



Gorsky
173.28
00-0235

August 7, 2000

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
Research and Special Programs Admin. – DHM-10
U. S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

RE: LEAKPROOFNESS TESTING OF PLASTIC DRUMS – 173.28 (b)(7)

Dear Mr. Mazzullo:

As your files will show, our firm has written several times in the past concerning this subject. Each time we have received guidance from your office and have passed it along to numerous industry representatives and individual companies. Recently several companies have been visited by the enforcement section of RSPA in their efforts to verify compliance with 173.28. These visits have revealed conflicts in the compliance efforts of the industry with respect to the reuse of plastic drums. Therefore, in another attempt to hit this moving target with the proper mix of compliance and practical application as they both relate to safety, the following questions and examples are submitted for formal guidance.

Please review the following questions/statements and advise if you agree with them or provide the correct answer:

1. If one wishes to reuse a plastic drum for hazardous materials they must either have it reconditioned or comply with the requirements for reuse in 173.28.
2. Unless one meets an exception in paragraph (b) the plastic drum must be leakproofness tested before each refilling of hazardous materials.
3. If you leakproofness test a plastic drum you must mark each drum with "L" and the year tested along with the name and address of the tester or a symbol issued by RSPA.
4. The test must be performed according to 178.604 which requires each drum to be "restrained under water while an internal air pressure is applied".
5. The pressure applied for the leakproofness test required under 173.28 is higher for the PG I then it is in the original test contained within 178.604.
6. Under 173.28 (b)(7), if you fill a plastic drum with hazardous material requiring a specification container, place the drum on your private transport vehicle, deliver the material directly to your customer who uses the material, then your vehicle picks up the empty container and returns it to the filling location which refills the drum with a like material, can you use the referenced exception and ship the drums out a second time without leakproofness testing?

NORTH AMERICAN TRANSPORTATION CONSULTANTS, INC.
Your Total Transportation and Safety Consultants
P.O. Box 1404 • Hightstown, NJ 08520 • 609-426-0555

7. If the facts in #6 are used but the material goes to your warehouse for "storage in transit" before it is delivered to the customer, can I still use the referenced exception?
8. If the warehouse used in #7 is a public warehouse does that make a difference?
9. Does it make a difference if the transport vehicle used to move the materials in the plastic drums is a Common, Contract or Private carrier as long as the vehicle is exclusive use?
10. If my company has a sales agreement with another company to act as our distributor of these plastic drums in several parts of the country, does RSPA consider them to be the original filler (under 173.28 (b)(7)(ii)) when the material is offered from their distribution facilities?
11. Can I use the exception contained in 173.28 (b)(7) to refill and offer hazardous material in plastic drums without leakproofness testing if I control the distribution chain for these drums, refill them with like materials and make sure the vehicles which transport them are under exclusive use (*as used here exclusive use would mean transporting these plastic drums along with only my material or that of my authorized distributor*)?

During my attempts to clarify this compliance issue, several additional twists have been noted which require addressing by RSPA. These twists are noted below and it is request that they be addressed in your reply to this letter or in a separate reply as you deem appropriate.

Spent materials are being shipped back to the original manufacture of the product for re-processing by small users of hazardous materials in plastic drums. These shipments were previously covered under the exception in 173.28(b)(6). In the past two (2) years the EPA has issued letters of authorization removing these materials from the requirement for a waste manifest.

Please review the following statements/questions and advise if they are accurate or if I may be misinformed and drawing the wrong conclusion. In this case I look forward to being wrong and corrected by your considerate staff.

1. It is my understanding that without the manifest requirement these materials do not meet the definition of a "hazardous waste" in 171.8 and as such can not use 173.28(b)(6).
2. Is it possible that since these materials are being sent directly to the re-processor, they meet the intent of par (b)(6) and as such can still be filled and offered under that exception?
3. It will be impossible for these small manufacturers to leakproofness test these drums as outlined above (178.604) and as such would be required to purchase new drums to return spent material for re-processing. This would place an unreasonable financial hardship on these shippers while not improving safety at all.

In discussions with Mr. James Jones of the Approvals section it was determined that the marking requirements and testing requirements contained within 173.28 could be easily confused with the

reconditioning requirement for the plastic drums. Therefore, it appeared to be more preferable and probably safer to have offers covered under 173.28(b)(7).

Thank you for your time and assistance in this matter. If you require additional information feel free to contact me directly at (609) 426-0555.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. P. Gibbons". The signature is written in black ink and is positioned above the printed name and title.

J. P. Gibbons
President