



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

AUG 25 2004

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

Ms. Sarah L. Basham
Director of Transportation
Corporate Regulatory Affairs
The Sherwin-Williams Company
101 West Prospect Avenue
Cleveland, OH 44115-1075

Reference: 03-0266

Dear Ms. Basham:

This letter replaces our November 21, 2003 response concerning the provisions for reuse of packagings under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your company reuses empty non-bulk specification drums for temporary storage and disposal of hazardous waste. You ask if you must bring the drums into compliance with Part 178 as specified in § 173.22(a)(4) or whether you can take advantage of the exception for reuse of a packaging as specified in § 173.12(c). Our earlier response was in error and is corrected below. I apologize for any inconvenience this may have caused.

Section 173.12(c) authorizes the reuse of a previously used packaging for the shipment of waste material transported for disposal and recovery under certain conditions. The packagings are not subject to the reconditioning and reuse provisions contained in § 173.28 and the associated marking requirements in Part 178. Also they are not excepted from other applicable Part 178 requirements. Therefore, as prescribed in § 173.22(a)(4), the shipper must perform all other functions necessary to bring the package into compliance, such as closing the package consistent with the manufacturer's written closure instructions.

I hope this information is helpful.

Sincerely,

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



030266

173.12



Environmental, Health, &
Regulatory Services

Corbin
§ 173.12
Exceptions

03-0266

THE SHERWIN-WILLIAMS COMPANY
101 WEST PROSPECT AVENUE
CLEVELAND, OH 44115-1075

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 16, 2003

Mr. Edward T. Mazzullo
Director of Office of Hazardous Materials Standards
USDOT/RSPA (DHM-10)
400 7th Street SW
Washington, DC 20590-001

Dear Mr. Mazzullo:

Our company reuses empty UN-certified 55-gallon drums for the temporary storage and disposal of hazardous waste. The waste drums are picked up at our facilities at regular intervals by licensed hazardous waste transporters and taken to disposal facilities.

In 49CFR §173.22(a)(4) the regulations indicate that when dealing with packaging subject to the requirements of part 178, it is the shipper's responsibility to perform all functions necessary, as identified by the packaging manufacturer, to bring the package into compliance. In other words, the shipper is instructed to specifically follow the closure instructions the manufacturer provides for any UN-packaging used.

In 49CFR §173.12(c) the one-time reuse of UN-packaging for the transport of hazardous waste is authorized. The regulations in that section indicate that such reused packagings are not subject to the requirements of part 178.

Based on these regulations, our question is whether the requirements of 173.22(a)(4) apply to UN-approved drums that are being reused for hazardous waste. Specifically, is it necessary to have written closure instructions from the original manufacturer or distributor available and to have directed personnel in following those closure instructions? Can you please provide a written interpretation in response to this question? Thank you for your prompt assistance with this matter.

Sincerely,
THE SHERWIN-WILLIAMS COMPANY

Sandra L. Basham
Director of Transportation
Corporate Regulatory Affairs