



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

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

AUG 13 2004

Mr. Chad Odom
President
Innovative Container
P.O. Box 8837
Greenville, SC 29604

Ref. No. 04-0112

Dear Mr. Odom:

This is in response to your letter requesting clarification of certain marking requirements for UN specification drums under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether your marking procedures are in compliance with the HMR. You state that your company manufactures UN specification drums and marks them "UN 1H2/Y200/S/03/USA"; however, the drums are not marked with the manufacturer's registered symbol or name and address until a customer submits an order for a UN specification drum. Your reason for following this procedure is that at the time of manufacture, it is not known whether you will be selling the drums to a customer who will fill the drums with hazardous or non-hazardous materials.

Regardless of whether the drums are to be used for the transportation of hazardous materials, marking your drums "UN 1H2/Y200/S/03/USA" represents the drums as being manufactured to the marked UN standards. Omitting the manufacturer's symbol or name and address does not negate the representation that the marking "UN 1H2/Y200/S/03/USA" indicates to users, shippers, and others that the drums conform to the standards as marked. You state that the omission of the information is "the recognized means of communicating to drum users that the packaging is not certified" as being in conformance with the UN standards. Such a provision is not authorized under the HMR. Therefore, marking the drums "UN 1H2/Y200/S/03/USA" and omitting the manufacturer's symbol or name and address does not conform with § 178.503(a)(8).

The attachments you submitted indicate that the UN design qualification tests have not been performed on these marked drums. Section 178.601(d) requires successful design qualification testing to be performed at the start of production of each new or different packaging. Performing the design qualification testing after the manufacturing process is



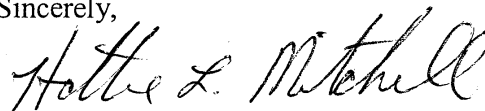
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178.503

completed is contrary to the HMR. With respect to the pre-marking of the drums, except as provided in § 178.2(c), a new drum may not display UN markings unless the drum fully conforms to the standards for which it is marked (see §§ 171.2 (c) and (f), and 178.2(d)).

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

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in black ink and is positioned above the typed name.

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



April 22, 2004 DRAFT

P.O. Box 8837
Greenville, SC 29604
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Edward Mazzullo
Office of Hazardous Materials Standards
Research & Special Programs Administration
U.S. Department of Transportation
Washington, DC 20590

McIntyre
§178.503
Marking of Packagings
04-0112

Re: Request for interpretation;
49 CFR 178.503

Dear Mr. Mazzullo:

On behalf of Innovative Container of Greenville, SC, I am writing to request an interpretation of the marking provisions of the hazardous materials regulations. Innovative Container is a manufacturer of new plastic drums for shipment of hazardous and non-hazardous materials.

→ NOT ATTACHED - CALLED & ASKED

On March 17, 2004, we were sent a "Letter of Warning" from RSPA's College Park, GA, Office of Hazardous Materials Enforcement (copy attached). While not imposing a penalty, the letter indicates that the practices followed by Innovative Container may be a violation of the regulations, and that "substantive recurrence of this probable violation... may subject" the company to additional enforcement action. The regional office encouraged us to seek an interpretation from the Office of Standards; hence this letter.

In the company's manufacture of new plastic drums, UN "first line" performance information is molded into the drum as a permanent mark. If the drum is sold to a hazmat customer, the second line identification of the manufacturer or third-party certifier is added, completing the UN certification required for hazmat packaging under Sec. 178.503.

Under Sec. 178.503(a)(1)-(11), a complete UN mark, including so-called first and second-line information, is required to certify compliance with the UN performance standard. For a steel drum, omission of the identity of the certifying party is the recognized means of communicating to drum users that the packaging is not certified as being in conformity with the UN performance standards. A steel drum manufacturer's first-line partial mark, embossed on the bottom of every metal drum over 100 liters capacity, only gives pertinent "birth certificate" information about the original performance capabilities of the packaging, even though it includes the UN initials. That partial mark alone does not constitute a certification. The certification must be provided by the manufacturer's (or subsequent reconditioner's) complete first and second-line UN mark on the top or side of that drum. After the first reconditioning process removes the

original manufacturer's durable complete UN mark, the partial embossment remains, but that partial mark still cannot be relied upon by any filler unless or until someone applies a new complete UN mark.

Innovative is following the same policy with respect to their plastic drums. An incomplete marking is not intended to be a certification of compliance. If and when we sell packaging for hazardous materials service, we complete the UN marking by affixing a durable indication of the certifying third-party test laboratory. In turn, any reconditioner who removes that durable mark must restore the complete UN mark before offering the reconditioned packaging for hazardous materials service.

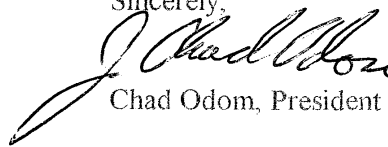
The design type in question has been third-party tested for hazardous materials and, when offered for such service, is so marked. A copy of that test report is enclosed. → *NOT ENCLOSED*

We employ the marking methods for steel drums in the manufacturer of our plastic drums because the alternative would be to apply a full UN mark on every drum. Such a permanent complete mark would constitute an unending certification by our company that the drum continues to meet the UN standards, regardless of what service it has been in, who may have reprocessed or reused it, or its current condition. That is why we follow the marking practices that have worked for the past ten years in the steel drum field.

We are not asking for any rule change to describe this practice, but we are concerned with the contention by the RSPA inspector that what we have done constitutes a violation. We would appreciate your concurrence that, as the rules are written today, this marking practice is not a violation.

Please let me know if you have any questions on this request.

Sincerely,



Chad Odom, President