



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

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

NOV 24 2005

Mr. Greg Born  
Safety Assistant  
N & M Transfer Co., Inc.  
630 Muttart Road  
Neenah, WI 54956

Ref. No.: 04-0217

Dear Mr. Born:

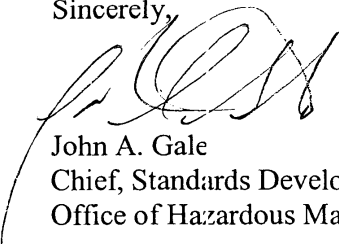
This is in response to your letter dated July 19, 2004 requesting clarification of the packaging requirements found in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a consignee may refuse to accept a shipment of hazardous material that shows evidence of leakage during transportation.

The answer is yes. A consignee may refuse to accept a shipment of hazardous material that shows evidence of leakage during transportation. In that case, it is the carrier's responsibility to safely repair, overpack, store or dispose of a leaking or damaged hazardous material package in accordance with §§ 177.854(b) and 173.3(c).

Also note that the person in physical possession of a leaking hazardous material package at the time it is discovered in transportation must submit a Hazardous Materials Incident Report within 30 days of the discovery of the incident (§ 173.16).

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



John A. Gale  
Chief, Standards Development  
Office of Hazardous Materials Standards



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177.854(e)

DHM-10



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§ 177.854(e)  
Applicability  
04-0217

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July 19<sup>th</sup>, 2004

Research and Special Programs Administration  
Office of the Chief Counsel  
400 Seventh Street, SW  
Room 8407  
Washington, DC 20590  
(202) 366-4400

Dear RSPA:

Can 177.854(e) be enforced on a consignee when it is discovered that the hazardous material packaging being delivered to them indicates evidence of leakage? In other words, by referring to this regulation, can a motor carrier force a consignee to accept hazardous material packaging even though there is evidence of leakage (e.g. residue around vent caps)? Doesn't a consignee who refuses packaging under these conditions force a motor carrier to increase the health risks to the general public when the packaging is forced to continue in transport?

We recently had an incident in which this occurred. We were willing to pick up the hazardous packaging the next day when we could return with metal overpack containers to reduce or minimize any further chances of spills during transport. This customer still would not accept our request. This consignee has a policy that the entire shipment will be refused whenever there are any signs (no matter how minor) of leakage on hazardous material packaging. My company was advised that the consignee's attorney told them they have the right to refuse any shipment, regardless if it is or is not hazardous.

Any input you could provide would be appreciated.

Sincerely,  
N & M Transfer Co., Inc.

NI  
  
Greg Born  
Safety Assistant