



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

OCT 27 2005

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

Mr. Daniel J. Young
President
EHS Associates, Inc.
3301 Bentwillow Drive
Fuquay-Varina, NC 27526

Ref. No.: 05-0190

Dear Mr. Young:

This is in response to your August 1, 2005 letter requesting further clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to consumer commodities. Specifically, you ask whether small gas cylinders of carbon dioxide that are used for powering industrial tools may be renamed "Consumer commodity," and reclassified as "ORM-D material." You state your cylinders could be sold at the retail level with a slight change in the design of the outlet valve on the cylinders.

As specified in § 173.306(h), a limited quantity of compressed gas which conforms to paragraph (a)(1), (a)(3), or (b) of this section and is a "Consumer commodity" as defined in § 171.8 of the HMR, may be renamed "Consumer commodity" and reclassified as "ORM-D material." Section 171.8 of the HMR defines a "Consumer commodity" as a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. Your material as described in your letter is not packaged and distributed in such a manner. Therefore, you may not rename your material as a "Consumer commodity" or reclass it as "ORM-D material."

I hope this information is helpful.

Sincerely,

Susan Gorsky
Acting Director
Office of Hazardous Materials Standards



050190

173.306(h)

EHS ASSOCIATES, INC.
3301 Bentwillow Drive, Fuquay-Varina, NC 27526 (919) 552-6978

Foster
§173.306(h)
Cylinders
05-0180

August 1, 2005

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
400 7th Street S.W.
Washington, DC 20590-001

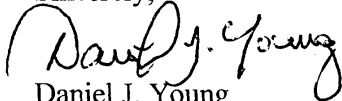
Dear Mr. Mazzullo:

I represent a client who currently ships small cylinders of carbon dioxide using the shipping description "Carbon dioxide, 2.2, UN 1017." The small gas cylinders are used for powering industrial tools but are similar to cartridges used for powering paint ball and other air guns. The cylinders come in a small box of ten, and there are approximately 16 grams of carbon dioxide in each cylinder. Although these cylinders are not sold to or used by the general public, the cylinders are similar to those used by the general public for air guns and similar devices. The cylinders could be sold at the retail level if there was a slight change in the design of the outlet valve on the cylinders.

My client would like to reclassify the carbon dioxide cylinders as ORM-D materials and rename them as consumer commodities. Although I believe that these cylinders meet the criteria for reclassification in 49 CFR 173.306(h), I would like you to provide me with a written verification that these carbon dioxide cylinders could be reclassified and transported by ground and by air as ORM-D consumer commodities under the hazardous materials regulations.

Please contact me at (919) 552-⁶⁹⁷⁸6878 if you need further information about this request. Thank you for your assistance with this question.

Sincerely,



Daniel J. Young
President