



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

NOV - 4 2005

Ms. Elizabeth E. Novak
Environmental Waste Specialists, Inc.
14100 Sullyfield Circle, Suite 400
Chantilly, VA 20151

Ref. No. 05-0260

Dear Ms. Novak:

This is in response to your letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to shipments of asbestos contained in manufactured products.

Your interpretation of the HMR regarding the exceptions for the shipment of asbestos is correct. As provided in § 172.102, Special Provision 156, asbestos contained in manufactured articles, (for example, vinyl floor tiles or roofing papers), or immersed or fixed in a natural or artificial binder material (for example, cement or asphalt) is not subject to the HMR.

You also ask whether these materials, if non-regulated, require a shipping description and package marking. The answer is no. Moreover, packages containing materials that are not subject to the HMR may not be marked, certified, or otherwise represented as a hazardous material when a hazardous material is not present (see § 171.2(k)).

I hope this information is helpful. Please contact this office if you have additional questions.

Sincerely,

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



050260

172.102 SP 156



Environmental Waste Specialists, Inc.

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October 11, 2005

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Shipping Paper
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Post-it® Fax Note	7671	Date	10/20/05	# of pages	4
To	Mr. Mazzullo	From	Elizabeth N. Nalut		
Co./Dept.	Dept. of Transp.	Co.	EWSI		
Phone #		Phone #	703-502-0100		
Fax #	202-346-3012	Fax #	703-502-1796		

Re: Asbestos Containing Material (ACM/RACM)

Subject: Shipping Description and Shipping Paper

Dear Mr. Mazzullo,

Over the years I have been asked, in particular, questions pertaining to the shipping description, and shipping papers required to properly ship waste generated from an asbestos abatement project subject to the NESHAP regulations 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos.

I am writing this letter to kindly ask for a written reply from your office to ensure that I am correctly interpreting the regulations and if the following regulations I reference support my conclusions.

My questions are as follows:

1. Is the shipping description, RQ, Asbestos, 9, NA2212, PG III required on a Waste Shipment Record?
2. Are you required to use a Hazardous Waste Manifest (EPA Form 8700-22) to ship asbestos containing material (ACM/RACM)?

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Please see the following definitions and regulations I referenced to support my conclusion noted at the end of this letter.

"Asbestos- containing waste material (ACM)" by definition is any mill tailings or any waste that contains *commercial asbestos* and *is generated by a source* subject to 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos.

Asbestos-Asbestos Containing Material is regulated under Title 40-Protection of the Environment -National Emission Standards For Hazardous Air Pollutants (NESHAP), **specifically CFR 40 Subpart M-National Emission Standard for Asbestos. 61.140- 61.157 and Appendix A to Subpart M of Part 61- Interpretive Rule Governing Roof Removal Operations**

In this Standard a sample of the shipping paper, WASTE SHIPMENT RECORD (WSR) and how to complete the shipping paper can be found in detail, 40 CFR 61.149 Figure 4. Waste Shipment Record and Instructions. Please refer to the Asbestos NESHAP Regulations, Section 61.150 Standards for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations. Specifically paragraph (d) For all asbestos-containing material transported off the facility site: (1) maintain waste shipment records, using a form similar to that shown in Figure 4.

This shipping document (WSR) used by the asbestos abatement industry, must be prepared and is required for the shipment and disposal of asbestos containing materials (ACM/RACM) generated from an asbestos abatement project.

The shipping description, RQ, Asbestos, 9, NA2212, PGIII, would be required if you were shipping Asbestos, see Hazardous Materials Table 172.101 found in 49 CFR 171-180 if the material is not subject to:

- 1) Special Provisions or other exceptions found and referenced in the Hazardous Materials Table or
- 2) Not subject to the NESHAP Asbestos Regulations.

However, the waste material being commented on is asbestos containing material, Asbestos which is immersed or fixed in a natural or artificial binder material (such as cement, plastic, asphalt, resins or mineral ore), and manufactured products containing asbestos are *not subject to the requirements of 49 CFR 177.817(a) and 172.205(a) but are subject to 40 CFR 61.140-157 (NESHAP Asbestos Regulations).*

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Further because of these sections and the requirements/references found in the Hazardous Material Table contained in 49 CFR, 172.101 the proper shipping description does not apply, by referring to Column 7, Special Provisions, 172.102- Code/Special Provision number 156 which states "Asbestos that is immersed or fixed in a natural or artificial binder material, such as cement, plastic, asphalt, resins or mineral ore, or contained in manufactured products is not subject to the requirements of this subchapter".

Also, Column (1) Symbols, the letter D, found in Part 172.101, (b) (3) allows an alternate proper shipping name may be selected when either domestic or international transportation is involved.

49 CFR 177.817(a) - Shipping Papers (a) General Requirements. A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with Part 172 of this subchapter or the material is excepted from shipping paper requirements under this subchapter. A subsequent carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with Part 172 of this subchapter, except for 172.204, which is not required.

It is my interpretation, asbestos containing material as previously described is excepted under special provisions found in 172.102 Code/ Special Provisions, number 156, from the requirements pertaining to the shipping description found in the hazardous material table in 172.101 for Asbestos.

49 CFR 172.205(a) Hazardous Waste Manifest. (a) No person may offer, transport, transfer, or deliver a hazardous waste (waste) unless an EPA Form 8700-22 and 8700-22A (when necessary) hazardous waste manifest (manifest) is prepared in accordance with 40 CFR 262.20 and is signed, carried, and given as required of that person by this section.

As referenced previously, again the shipping document required and referenced by example in the NESHAP Regulation, Figure 4 Waste Shipment Record (WSR) and Instructions is not a hazardous waste manifest. Further, I found no reference in the entire applicable regulation that a hazardous waste manifest EPA Form 8700-22 or 8700-22A is required.

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It is my understanding and conclusion from researching the above regulations that you are not required to use a proper shipping description (RQ, Asbestos, 9, NA2212, PG III) and you are not required to use a Hazardous Waste Manifest (EPA Form 8700-22).

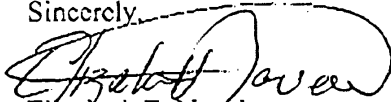
However you are required to prepare a Waste Shipment Record and you must give a description of materials, using a form similar to that shown in Figure 4, found in 40 CFR 61.149 and referenced by example 61.150(d).

I apologize if I have been redundant when referencing numerous regulations but I wanted to make sure I included all the regulations and sections I felt were applicable.

Mr. Mazzullo, I hope I have been clear in my questions pertaining to the shipping description and shipping paper required for the transportation and disposal of asbestos containing material.

I look forward to receiving your reply. If you have any questions, please do not hesitate to call me at 703-502-0100.

Sincerely,



Elizabeth E. Novak
Manager

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