



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

East Building, PHH – 30
1200 New Jersey Avenue, Southeast
Washington, D.C. 20590

April 28, 2008

Ref. No.: 08-0109

Lawrence W. Bierlein
Suite 500
1101 30th Street, NW
Washington, DC 20007

Dear Mr. Bierlein:

This is in response to your letter of March 20, 2008, asking for a summary of the legal status of DOT Special Permits for the manufacture, marking, sale, and use of composite cylinders for compressed gases.

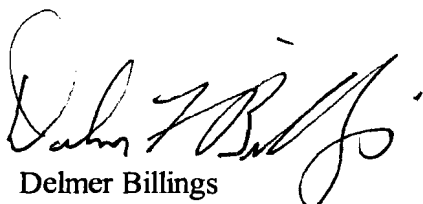
The United States Department of Transportation (DOT) issues hazardous materials transportation regulations (HMRs) under the authority of Title 49, United States Code, Sections 5101, *et seq.* Under this law, HMRs of general applicability are published in title 49 of the United States Code of Federal Regulations (CFR) Parts 100-185. These regulations have the status of law, and are enforceable by compliance orders as well as civil and criminal penalties. The HMRs include a number of gas cylinder specifications in 49 CFR Part 178, and makers of this hazardous materials packaging are subject to DOT's direct inspection and enforcement jurisdiction.

In addition to the regulations of general applicability, 49 USC. § 5117 empowers the Secretary of Transportation to issue Special Permits authorizing alternative practices and packaging to those specified in the general HMRs. The application and grant process has been delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA) and is

described in 49 CFR Part 107, Subpart B. PHMSA must find that the Special Permit maintains a level of safety "at least equal to the safety level required" under the regulations of general applicability. As required for establishment of a general regulation such as a specification for packaging, issuance of a Special Permit is a public process, involving a public comment period. DOT maintains several thousand Special Permits, many prescribing equivalent standards for the manufacture and use of composite cylinders.

Regulations of general applicability and Special Permits are legal authorizations developed, issued, and enforced by PHMSA. Compliance inspections and sanctions apply equally, whether a matter is covered by a general regulation or a Special Permit. See 49 CFR Subpart D, Sections 107.305, 107.307, and 107.333. Thus, a Special Permit has the same legal force and effect as a DOT regulation published in Title 49 Code of Federal Regulations, and is considered equivalent to the specifications.

If you have additional questions please contact me at 202-366-4511.

A handwritten signature in black ink, appearing to read "Delmer Billings". The signature is stylized and cursive.

Delmer Billings
Director, Office of Hazardous Materials
Special Permits and Approvals

LAWRENCE W. BIERLEIN

March 20, 2008

Mr. Delmer Billings
Special Permits and Approvals
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
Washington, DC 20590

Dear Mr. Billings:

Several companies hold valid DOT Special Permits authorizing the manufacture, marking, sale, and use of composite cylinders in the transport of gases.

We have found that other government agencies, as well as State and local agencies, accept the idea of a DOT cylinder specification, but do not understand the legal significance of a DOT Special Permit.

For our use in explaining your program to these other authorities, could you please summarize the legal status of any DOT Special Permit authorizing the manufacture, marking, sale, and use of a composite cylinder.

Thank you.

Sincerely,

Lawrence W. Bierlein

Lawrence W. Bierlein
Suite 500
1101 30th Street, NW
Washington, DC 20007

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In addition to the regulations of general applicability, 49 U.S. Code 5117 empowers the Secretary of Transportation to issue Special Permits authorizing alternative practices and packaging to those specified in the general HMRs. The application and grant process has been delegated to the Pipeline & Hazardous Materials Safety Administration (PHMSA) and is described in 49 CFR Part 107, Subpart B. PHMSA must find that the Special Permit maintains a level of safety "at least equal to the safety level required" under the regulations of general applicability. As required for establishment of a general regulation such as a specification for

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Regulations of general applicability and Special Permits are legal authorizations developed, issued, and enforced by PHMSA. Compliance inspections and sanctions apply equally, whether a matter is covered by a general regulation or a Special Permit. See 49 CFR Subpart D, Sections 107.305, 107.307, and 107.333.

Thus, a Special Permit has the same legal force and effect as a DOT regulation published in 49 CFR, and is considered equivalent to the specifications. To the extent other institutions and authorities recognize the packaging specifications in DOT's general regulations, they also should recognize the Special Permits issued by this office.

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