



U.S. Department  
of Transportation

Pipeline and Hazardous  
Materials Safety  
Administration

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

NOV 06 2013

Mr. Denton L. Schantz  
Environmental Specialist  
Chevron Products Company  
Chevron Salt Lake Refinery  
2351 North 1100 West  
Salt Lake City, UT 84116

Reference No. 13-0084

Dear Mr. Schantz:

This is in response to your April 15, 2013 and April 22, 2013 letters requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the selection of the most appropriate proper shipping name for certain hazardous wastes. Specifically, you ask whether the most appropriate proper shipping name for the material you describe, which is being transported to a facility for disposal is "NA3077, Hazardous waste, solid, n.o.s." with §§ 173.213 and 173.240 as the packaging authorization sections, or "NA3082, Hazardous waste, liquid, n.o.s.," with §§ 173.203 and 173.241 as the packaging authorization sections. You also ask whether your material can be transported under "NA3077, Hazardous waste, solid, n.o.s." when the offeror is using § 173.203 or § 173.241 for the packaging authorization sections to account for the presence of liquids, or must "NA3082, Hazardous waste, liquid, n.o.s." be used "because a solid proper shipping name would be incorrect."

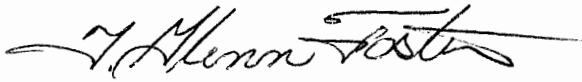
In your letter, you state that the material being transported is a mixture of a solid phase, consisting of the original waste material, and an aqueous phase, as the result of supplemental water used to facilitate cleaning. You state that the amount of water used to facilitate cleaning is kept to a minimum, and the solid phase is typically more than 80% by volume in the container. Subsequently, the mixture in the final container being offered for transport consists of a solid phase that is a hazardous waste under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. §§ 6901-6992k) and an aqueous liquid phase, that is not regulated. You believe that "Hazardous waste, solid, n.o.s." would be the most appropriate proper shipping name because the regulated material is from the solid phase material in the container. You also view the solid proper shipping name most appropriate due to the information that it provides to emergency responders.

In the scenario which you describe, the two-phase non-homogeneous material would be properly described as "NA3077, Hazardous waste, solid, n.o.s." Sections 173.203 or 173.241 must be used to determine the appropriate packaging authorized to account for the

presence of liquid, as prescribed in § 172.101(i)(4). Because the shipping description identifies the material as a solid, additional information may be included on the shipping paper, in association with the basic description, to convey the physical state of the material. However, any additional information must conform to § 172.201(a)(4) (not be inconsistent with the required description and must come after it) as well as all shipping paper requirements (e.g., the basic description must be in the required sequence with no additional information interspersed). Additionally, unless the material is excepted under § 172.203(k), the technical name of the hazardous waste may be required.

I hope this information is helpful. Please contact this Office should you have additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division



Denton Schantz  
Environmental Specialist

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April 15, 2013

U.S. DOT  
PHMSA Office of Hazardous Materials Standards  
Attn: PHH-10  
East Building  
1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

McIntyre  
§172.104  
§173.22  
Shipping Name  
13-0084

**RE: REQUEST FOR PHMSA INTERPRETATION**

PHMSA Office of Hazardous Material Standards:

This correspondence is submitted for the purpose of requesting a formal PMSHA interpretation regarding a specific case that periodically occurs in the sector of D.O.T. compliance involving transportation of RCRA hazardous wastes that are appropriately transported under the NA3077 and/or NA3082 shipping names. Occasionally, differing regulatory interpretations between the shipper/offeree of these types of hazardous wastes, and the transporter (in some cases, also the integrated waste management company that is evaluating the wastes for treatment/disposal) of such wastes sometimes results in a difference of opinion as to the proper D.O.T. shipping name. Guidance from PHMSA on this specific issue would likely be of value to those involved in the D.O.T. regulated transport of hazardous wastes in commerce.

Before outlining the specific scenario for your consideration, let me first state that I do understand that it is the responsibility of the shipper/offeree to determine the proper shipping name for a material (under 173.22); however, I, in the role of the shipper/offeree, am attempting to seek the interpretation from PHMSA as to the soundness and validity of the approach that I will be presenting on this specific subset of hazardous wastes. Specifically, PHMSA's interpretation as to whether the outlined approach is somehow "incorrect" (as referenced in 171.2(f)), and would rise to a level that would constitute a basis for refusal (from a regulatory standpoint) to transport by a qualified transporter with a differing viewpoint, based upon what that transporter deems that the proper D.O.T. shipping name should be, is sought in this request.

To provide you with some basic background on the case for consideration, a common scenario which would cause such materials to be generated and containerized for D.O.T. regulated transport is often the following:

- A product storage tank, processing vessel, or other type of processing equipment that accumulates solid materials over time, as the result of normal manufacturing operations, is removed from service, and opened up for cleanout of the accumulated solid materials.
- Prior to commencing cleanout work, the tank, vessel, or other type of equipment is emptied/drained, purged, and prepared for safe entry. What remains in the equipment are the residues that constitute the solid waste material to be removed for disposal.
- To facilitate cleanout of the material from the tank, vessel, or other equipment, supplemental water is often used. The water may be applied to blast the material free of surfaces, and/or to assist with partially fluidizing the solid materials to accomplish a more effective removal from the tank or vessel.
- The final material that is containerized for D.O.T. regulated transport to a final TSDF facility for disposal is a mixture of the solid phase, consisting of the original waste material, and an aqueous phase, as the result of supplemental water used to facilitate cleaning. For waste minimization reasons, the amount of water used to facilitate cleaning is kept at a minimum, and the solid phase in the final mixture is typically more than 80% by volume in the container used for its packaging.

Starting from the basic background information provided just above for how the material to be containerized for transport is often generated, I will now attempt to outline the case for which an interpretation is being requested.

- The solid waste material is sampled, analyzed and determined to be a RCRA hazardous waste, based upon characteristics alone (i.e., it is not from a RCRA listed hazardous waste source), and would, if containerized by itself (i.e., without supplemental water) and shipped under regulated D.O.T. transportation, most appropriately be described with a NA3077 Hazardous waste, solid, n.o.s. generic shipping name.
- The aqueous phase material is sampled directly from the final containerized mixture, analyzed, and it is determined from the analysis that, if it were to be physically separated from the mixture in the container, it would not be a RCRA hazardous waste, or a D.O.T. hazardous material, if it were to be shipped by itself.
- Therefore, the mixture in the final container being offered for D.O.T. transport consists of a solid phase that is a RCRA hazardous waste, and an aqueous liquid phase that is not regulated. This is the premise for the case I am requesting that you consider.

I believe a valid and proper approach is to identify this D.O.T. regulated material as a NA3077, Hazardous waste, solid, n.o.s., supplemented with a change in packaging specifications from 173.213 to 173.203 (for non-bulk) and 173.240 to 173.241 (for bulk), and base that approach upon the following reasoning and interpretation from appropriate citations from 172.101 as described below:

- Although 172.101(c)(8) seems to apply to pure hazardous materials that can change physical state due to environmental conditions, and the shipping names being considered already have the words “liquid” or “solid” contained within them, in such cases, the shipper must refer to the 172.101(i)(4) table to determine appropriate packaging, which seems consistent with the general issue involved in this case.
- 172.101(c)(10)(i) does not seem appropriate in this case, because we do not have a material identified by technical name involved, and therefore, it seems that use of a “mixture” qualifying word in the shipping name is not appropriate.
- 172.101(c)(10)(ii) seems to apply by one or more criteria, depending how those might be interpreted. 172.101(c)(10)(i)(A) seems to apply, due to the proposed solid shipping name, while liquid is also present in the containers; however, there is the exception reference to the 172.101(i)(4) table, which also seems consistent with the approach of a change in packaging specifications, while still using a solid shipping name. 172.101(c)(10)(i)(D) may be appropriate, although both the NA3077 and NA3082 shipping names refer to ERG Guide 171 for emergency response, and ERG Guide 171 includes response provisions for either liquids or solids.
- Under the assumption that 172.101(c)(10)(ii) does apply in this case, I am then required to use the shipping name selection process of 172.101(c)(12)(ii), which is clearly not inconsistent, given that a generic shipping name is already assumed to be the proper one in this case.
- Upon consideration of the proper shipping name in 172.101(c)(12)(ii), I am required to select “*the name that most appropriately describes that material*”, which I believe would be Hazardous waste, solid, n.o.s., in this case, because the source of the hazards in the mixture that are invoking the D.O.T. regulation of it are originating from the solid phase material in the container. The aqueous phase material present in the mixture, taken by itself, would be non-regulated. In the event of a transportation incident involving the material, the hazardous material component of the mixture that would constitute the more serious safety/health concern would be the solid phase material, and, therefore, the solid shipping name seems most appropriate. For this reason, I would view a solid shipping name more appropriate than a liquid shipping name, primarily due to the information it provides to potentially-impacted emergency responders.
- Based upon the 172.101(i)(4) table, assuming that I am proceeding in a valid manner to invoke it, I would then be required to change the packaging specifications for the material, because the packing specifications for NA3077 Hazardous waste solid, n.o.s. are obviously for solid material, and I would therefore change to packaging appropriate for liquids.

The alternative viewpoint on this, which is the basis for the assertion that the approach I described above for the above case is “incorrect”, is that because the containers do hold hazardous waste, and because there is a liquid component in the mixture, that a change in D.O.T. shipping name must be made to NA3082 Hazardous Waste, liquid, n.o.s., and that the material cannot be accepted for transport with a solid shipping name.

SUMMARY:

Based upon the case presented above, the following would be a question that I am seeking interpretation for:

*If the hazardous material described above were transported under a NA3077 Hazardous waste shipping name, when the offeror of the material utilizes the 173.213 packaging, as specified in the 172.101(i)(4) table, to account for the presence of liquids, or, must a NA3082 Hazardous waste, liquid, n.o.s. shipping name be used due to a solid shipping name being incorrect?*

173.203  
(not 213)

I hope that I have provided sufficient clarity in detailing the issue for your consideration, and would be happy to provide additional clarifying comments, in the event that I have left any confusion in my attempts to define and describe this issue.

Sincerely,



Denton L. Schantz  
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Chevron Salt Lake Refinery  
Salt Lake City, UT



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April 22, 2013

U.S. DOT  
PHMSA Office of Hazardous Materials Standards  
Attn: PHH-10  
East Building  
1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

**RE: CORRECTION TO 4/15/2013 INTERPRETATION REQUEST LETTER**

PHMSA Office of Hazardous Material Standards:

In a letter dated April 15, 2013, a request for a PHMSA interpretation was outlined, and I realized that there was an inadvertent error to one regulatory citation reference. Specifically, on the last page of the letter, a reference to 173.213 was made, and the reference was intended to cite 173.203. I apologize for this oversight, and hope you will understand that 173.203 was the intended reference, in the context of the question for interpretation. The specific text on the original letter should read as follows:

*“If the hazardous material described above were to be transported, could the material be transported under a NA3077 Hazardous waste, solid, n.o.s. shipping name, when the offeror of the material utilizes the 173.203 (or 241) packaging, as specified in the 172.101(i)(4) table, to account for the presence of liquids, or, must a NA3082 Hazardous waste, liquid, n.o.s. shipping name be used due to a solid shipping name being incorrect?”*

I regret the confusion that this error in citation may have caused, and hope that you will be able to apply this correction into the requested interpretation outlined in the original letter without significant difficulty.

Sincerely,

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