



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue SE  
Washington, DC 20590

**AUG 17 2015**

Scott Stultz  
President  
Ground Up Road Construction Inc.  
PO Box 1690  
Milton, WA 98354-1690

Ref. No. 15-0128

Dear Mr. Stultz:

This responds to your April 24, 2015 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to prohibited placarding. Specifically, you ask whether your company logo, when affixed to the door of a transport vehicle or to a piece of equipment, would be prohibited from being displayed while in transportation.

Section 172.502(a)(2) of the HMR states that, "any sign, advertisement, slogan (such as "Drive Safely"), or device that, by its color, design, shape or content, could be confused with any placard prescribed in this subpart is prohibited." In your email, you cite a letter from PHMSA Chief Counsel (Edwards to Mietus, August 2, 2006) that reverses an earlier interpretation that a particular company logo was prohibited in transportation. The letter states that because the company logo does not intend to mimic hazmat labels or placards, and is displayed at or near points on the vehicles where hazmat communication is not normally displayed, it is not prohibited.

The scenario you describe is similar to the August 2, 2006 letter mentioned above in that your proposed company logo contains similar design elements to those that are contained in hazmat placards (e.g., shape, color), but contains other graphics (e.g., company name, depiction of a road), as well. You also note that your company logo is placed on the sides of equipment and on the doors of vehicles, positions that hazmat placards are not normally located.

Based on the photographs and the information you provided, it is the opinion of this Office that your company logo does not constitute a prohibited placard when placed on the doors of vehicles and equipment, as described. However, we caution you to use care in the sizing and placement of your company logo in order to avoid any possibility of confusion with a hazmat label or placard.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dirk Der Kinderen', written in a cursive style.

Dirk Der Kinderen  
Chief, Standards Development Branch  
Standards and Rulemaking Division

**Goodall, Shante CTR (PHMSA)**

Ciccarone  
170.00  
Applicability  
15-0128

**From:** Geller, Shelby CTR (PHMSA)  
**Sent:** Friday, May 29, 2015 10:52 AM  
**To:** Goodall, Shante CTR (PHMSA)  
**Subject:** RE: Interpretation Letter Request

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Shante,

I wanted to double check that you did not need any more information from Mr. Kwate to process his interpretation request. I didn't notice that it was logged in the database, and just wanted to double check that there wasn't anything you needed from him. I can also resend his original request, if needed.

Thanks,  
Shelby

**From:** Geller, Shelby CTR (PHMSA)  
**Sent:** Monday, May 04, 2015 4:45 PM  
**To:** Goodall, Shante CTR (PHMSA)  
**Subject:** RE: Interpretation Letter Request

Hi Shante,

I spoke with Mr. Kwate and he indicated that the 4 attachments that could not be opened are not a part of his interpretation request, but rather a portion of his email signature. Only the attachments that are numbered are important towards his interpretation request.

Please let me know if you would like any more information from Mr. Kwate.

Thanks,  
Shelby

**From:** Goodall, Shante CTR (PHMSA)  
**Sent:** Thursday, April 30, 2015 1:50 PM  
**To:** Geller, Shelby CTR (PHMSA)  
**Subject:** FW: Interpretation Letter Request

Hi Shelby,

Can you please let Mr. Kwate know that some of the attachments cannot be open and to send them in another format?

Thank you,

Shante Goodall  
Senior Administrative Assistant  
UniSpec Enterprises, Inc.

US DOT/PHMSA Contractor

E24-410

Office: 202.366.9130

**From:** Geller, Shelby CTR (PHMSA)

**Sent:** Monday, April 27, 2015 10:56 AM

**To:** Hazmat Interps

**Subject:** FW: Interpretation Letter Request

Dear Shante and Alice,

Attached is a formal letter of interpretation request. Another contact from the company, Mr. Mark Eschbach, spoke with Steve Webb about the question.

Thanks,

Shelby

**From:** Dan Kwate [<mailto:dan@grndup.com>]

**Sent:** Sunday, April 26, 2015 2:12 PM

**To:** PHMSA HM InfoCenter

**Cc:** Scott Stultz; Susan Stultz

**Subject:** Interpretation Letter Request

We appreciate your consideration of the attached request and supporting documents.

Thank you,

**Dan Kwate**

Estimator

**Ground Up Road Construction Inc.**

**DBA M&M Road Recycle**

PO Box 1690

Milton, WA 98354-1690

P 253.891.1413 | C 208.457.2838 | F 253.891.1425

E [dan@grndup.com](mailto:dan@grndup.com) | W [grndup.com](http://grndup.com)

Please consider the environment before printing this email.

## Goodall, Shante CTR (PHMSA)

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**From:** Goodall, Shante CTR (PHMSA)  
**Sent:** Thursday, April 30, 2015 1:49 PM  
**To:** Geller, Shelby CTR (PHMSA)  
**Subject:** FW: Interpretation Letter Request  
**Attachments:** AFE846B2-68C7-4D37-A771-2D1121EC3D93.octet-stream; 797870F6-2B22-4F34-A30A-B733784007E4.octet-stream; F49F4606-D425-4910-A655-AF8CE737C81D.octet-stream; 25325540-EFBB-447A-9ED4-9F471BA847FE.octet-stream; Logo Approval Request.pdf; Attach #1 Original Logo.jpeg; Attach #2 WSP Approved Logo.jpeg; Attach #3 Proposed Logo.jpeg; Attach #4 NationsRent.pdf; Attach #5 WSP Correspondence.pdf; Attach #6 Construction Zone Signs.jpg; Attach #7 Hazmat Placards.jpg

Hi Shelby,

Can you please let Mr. Kwate know that some of the attachments cannot be open and to send them in another format?

Thank you,

Shante Goodall  
Senior Administrative Assistant  
UniSpec Enterprises, Inc.  
US DOT/PHMSA Contractor  
E24-410  
Office: 202.366.9130

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**Sent:** Monday, April 27, 2015 10:56 AM  
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**Subject:** FW: Interpretation Letter Request

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Thanks,  
Shelby

**From:** Dan Kwate [<mailto:dan@grndup.com>]  
**Sent:** Sunday, April 26, 2015 2:12 PM  
**To:** PHMSA HM InfoCenter  
**Cc:** Scott Stultz; Susan Stultz  
**Subject:** Interpretation Letter Request

We appreciate your consideration of the attached request and supporting documents.

Thank you,

**Dan Kwate**

Estimator

**Ground Up Road Construction Inc.**

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PO Box 1690

Milton, WA 98354-1690

P 253.891.1413 | C 208.457.2838 | F 253.891.1425

E dan@grndup.com | W grndup.com

*Please consider the environment before printing this email.*



**GROUND UP ROAD CONSTRUCTION INC**  
**DBA M&M Road Recycle**



April 24, 2015

BY EMAIL

Hazardous Materials Information Center  
U.S. Department of Transportation  
[infocntr@dot.gov](mailto:infocntr@dot.gov)

Re: Request for Clarification of 49 CFR, Section 172

Dear Transportation Specialist:

This letter is submitted as a formal request that the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation (PHMSA) determine whether our proposed business logo complies with 49 CFR, Section 172.

Ground Up Road Construction, Inc. began operations in March, 2008. We operate heavy equipment (asphalt grinders and pulverizers) on road construction projects. We transport our equipment to and from job sites on company-owned lowboy tractor-trailers. At the company's formation, we designed and began displaying our company logo (Attachment #1: Original Logo) on the sides of our equipment and on the doors of our vehicles. Although we traveled throughout the state and interacted with various Washington State Patrol (WSP) personnel without issues, WSP personnel at one particular weigh station deemed our logo in violation of 49 CFR, Section 172. By Summer, 2010, we had re-designed our logo to comply with WSP and have operated without problems ever since. (Attachment #2: WSP Approved Logo) In Spring, 2015, we again re-designed our logo. In an effort to achieve compliance and avoid a lengthy and costly re-design process, we preemptively submitted our new design to WSP for review. (Attachment #3: Proposed Logo) WSP verbally rejected our design, but supplied us with a determination issued by PHMSA (Reconsideration of letter Ref. No. 05-1053) (Attachment #4: NationsRent) addressing a situation similar to ours and suggested that we request approval to use our new logo design in transportation directly from PHMSA. (Attachment #5: WSP Correspondence)

We have carefully reviewed PHMSA's NationsRent reconsideration letter of August 2, 2006, and believe that the NationsRent case is on point, and therefore the determinations outlined in NationsRent are directly applicable to our case. In support of this claim, we wish to call your attention to the following:

- (1) The diamond-shaped box is a construction zone traffic sign – not a hazmat placard.**  
Examples of construction zone signs and hazmat placards (Attachment #6: Construction Zone Signs & Attachment #7: Hazmat Placards)  
Includes the word "road"

Mailing: PO Box 1690 Milton, WA 98354 Location: 1107 140<sup>th</sup> Ave Ct E. Sumner, WA 98390  
Office: 253.891.1413 Fax: 253.891.1425 Website: [www.grounduproadconstruction.com](http://www.grounduproadconstruction.com)



**GROUND UP ROAD CONSTRUCTION INC**  
**DBA M&M Road Recycle**



Includes a graphic depiction of a road  
Design elements extend beyond the diamond's borders on three sides  
One point of the diamond is covered  
Points of diamond rounded like a road sign – not pointed like a hazmat placard  
Color, while used in some hazmat placards, is definitely the color of construction zone traffic signs

**(2) The diamond-shaped box is just one design element. Proposed logo also includes:**

Company slogan: road destruction ahead  
Company initials: GU  
Graphic depiction of a road

**(3) Location**

Placed on sides of equipment and on doors of vehicles (where logos – not hazmat placards – are commonly placed)

We believe that WSP's opinion regarding the use of our proposed logo in transportation is based on what PHMSA in NationsRent referred to as "the misunderstanding that a blanket prohibition is warranted or compelled under our regulations because the depicted logos bear certain design elements similar to DOT hazard communication designs." Further, while we have great appreciation for the work of emergency personnel and great respect for the need to protect the clarity of the hazmat placard's role in hazmat communication, we believe that the use of our proposed logo would not create an unreasonable risk of confusion amongst people trained to communicate through the use of hazmat placards. We therefore believe that we fall well within the guidance provided by PHMSA in NationsRent.

Based on the arguments set forth above, we respectfully request that PHMSA review WSP's disapproval of the use of our proposed logo in transportation and issue written guidance addressing the application of 49 CFR Section 172 to the use of our proposed logo.

Sincerely,

Scott Stultz  
President



**From:** Hurd, Melvin (WSP) [<mailto:Melvin.Hurd@wsp.wa.gov>]  
**Sent:** Monday, March 23, 2015 3:26 PM  
**To:** Mark Eschbach  
**Subject:** RE: Ground Up

Mr. Eschbach,

I will forward your email to CVE Officer 4 Kevin Valentine at our Commercial Vehicle Bureau headquarters in Olympia.

Trooper Melvin Hurd  
Commercial Vehicle Enforcement Bureau  
Washington State Patrol  
15666 International Blvd.  
Tukwila, WA 98188  
206-439-3830

**From:** Mark Eschbach [<mailto:mark@grndup.com>]  
**Sent:** Monday, March 23, 2015 2:58 PM  
**To:** Hurd, Melvin (WSP)  
**Subject:** Ground Up

Good afternoon Trooper Hurd,

I have your contact information in my contact list. I hope I am contacting the correct person!

A few years ago we were asked to change the design of our logo on our tractors since they could be confused for a hazardous material identifier. We did change the logo to the approval of the WSP. We are currently redesigning our logo and would like to confirm with the WSP that the new logo is still appropriate? Please find a copy of potential logos attached. If I have not contacted the correct person, can you forward to me that Troopers contact information?

Thank you,

**Mark Eschbach**  
Safety Department



**Ground Up Road Construction Inc.**

**DBA M&M Road Recycle**

PO Box 1690

Milton, WA 98354-1690

P 253.891.1413 | C 206.817.7777 | F 253.891.1425

E [mark@grndup.com](mailto:mark@grndup.com) | W [grndup.com](http://grndup.com)



Please consider the environment before printing this email.

**Subject:** FW: Ground Up  
**Date:** Friday, April 24, 2015 at 9:07:02 AM Pacific Daylight Time  
**From:** Mark Eschbach  
**To:** Dan Kwate

**From:** Hurd, Melvin (WSP) [mailto:Melvin.Hurd@wsp.wa.gov]  
**Sent:** Friday, March 27, 2015 2:16 PM  
**To:** Mark Eschbach  
**Subject:** RE: Ground Up

Mr. Eschbach,

Attached is the information I spoke to you about on the phone. This is an interpretation that another company was given in regards to the same issue your company has.

You may be able to get the same type of review by contacting the Pipeline and Hazardous Material Safety Administration.

<http://www.phmsa.dot.gov/>

Trooper Melvin Hurd  
Commercial Vehicle Enforcement Bureau  
Washington State Patrol  
15666 International Blvd.  
Tukwila, WA 98188  
206-439-3830

**From:** Mark Eschbach [mailto:mark@grndup.com]  
**Sent:** Thursday, March 26, 2015 1:28 PM  
**To:** Hurd, Melvin (WSP)  
**Subject:** RE: Ground Up

Good afternoon Trooper Hurd,  
I have not heard back from Officer Valentine. Do you mind forwarding to me his contact information?

Thank you,

**Mark Eschbach**  
Safety Department



**Ground Up Road Construction Inc.**

**DBA M&M Road Recycle**

PO Box 1690

Milton, WA 98354-1690

P 253.891.1413 | C 206.817.7777 | F 253.891.1425

E [mark@grndup.com](mailto:mark@grndup.com) | W [grndup.com](http://grndup.com)



Please consider the environment before printing this email.

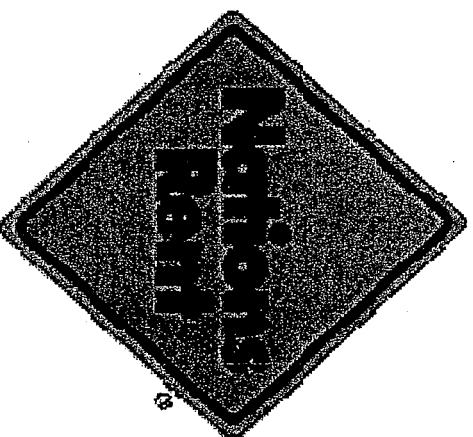
# NationsRent Branding on Equipment Is Consistent with HMR Placarding Restrictions

John Mietus

Ryan Compton

DLA Piper Rudnick Gray Cary US LLP

April 3, 2006



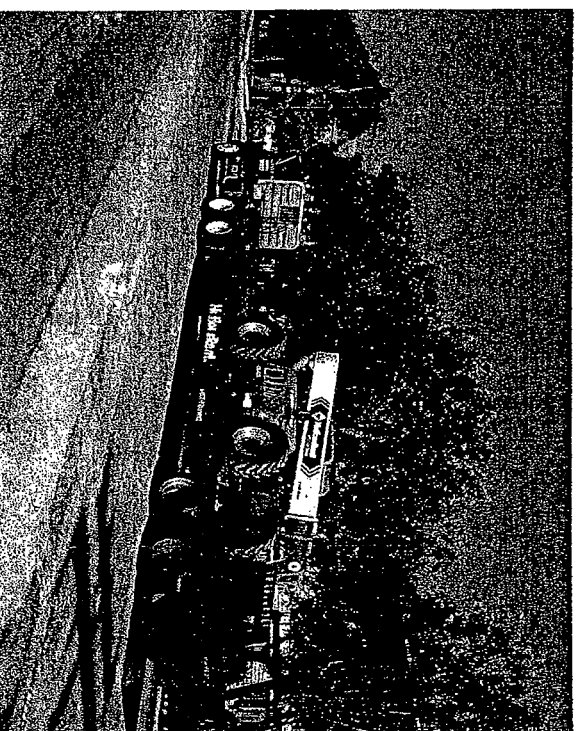
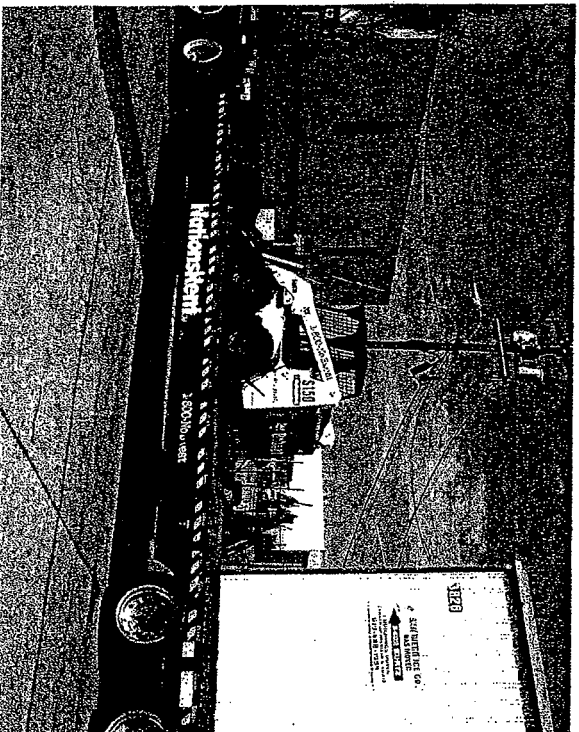
# NationsRent Supplies Familiar, Portable Construction Equipment

- Ranked 6<sup>th</sup> largest US equipment rental company by Rental Equipment Register
- 267 locations in 26 states nationwide (including Lowe's Home Improvement Centers)
- Over 100,000 items of more than 600 types, with an acquisition cost of \$1.1 billion

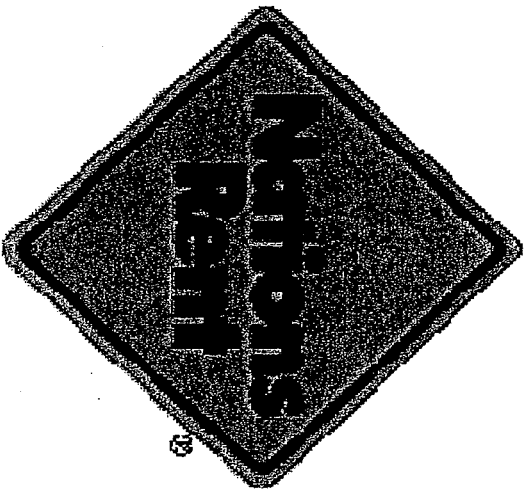


# NationsRent Vehicles Transport Equipment Between Yards and Job Sites

- Ranked among the top 100 private fleets by Fleet Owners Magazine
- Almost 1500 drivers subject to the FMCSRs, 729 with CDLs
- 1400 trucks (303 IRP-plated) and 453 trailers
- Three operating motor carriers with strong safety records (DOT 813891, 908638, and 920751)

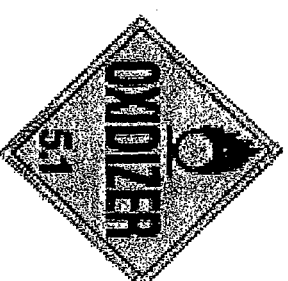
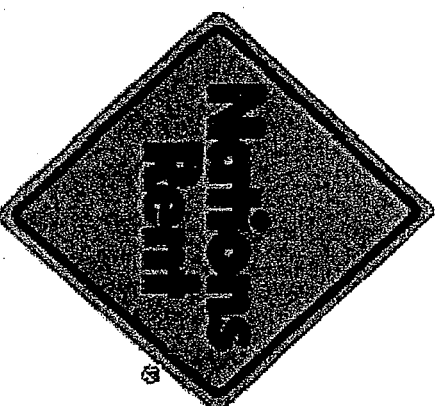
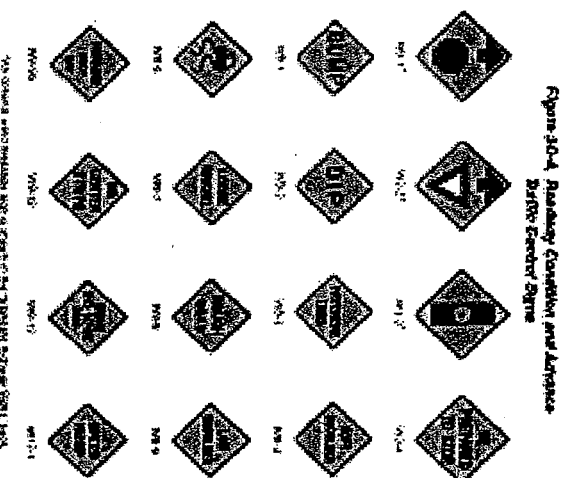


# Some NationsRent Branding Includes a Diamond-Shaped Logo



# The Diamond Logo Echoes Familiar Road Signs Rather Than Hazmat Placards

- Its simple, two-word message contrasts with the word, class number, and graphic information displayed on placards and labels.
- Its color is the common yellow shade used on highway warning signs; it resembles none of the standard hazmat placard colors.



# The HMR Prohibition on Confusing Markings

## Addresses Vehicles and Packagings

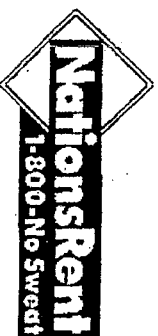
- 172.401(b): [No] carrier may transport a package bearing any marking or label which by its color, design, or shape could be confused with or conflict with a label....
- 172.502(a)(2): [No] person may affix or display on a packaging, freight container, unit load device, motor vehicle or rail car. . . any sign, advertisement, slogan (such as "Drive Safely"), or device that, by its color, design, shape or content, could be confused with any placard....

(emphasis added)

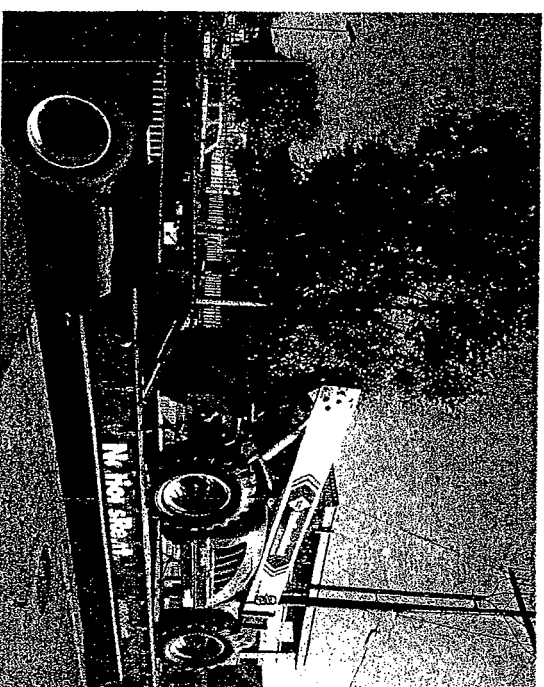
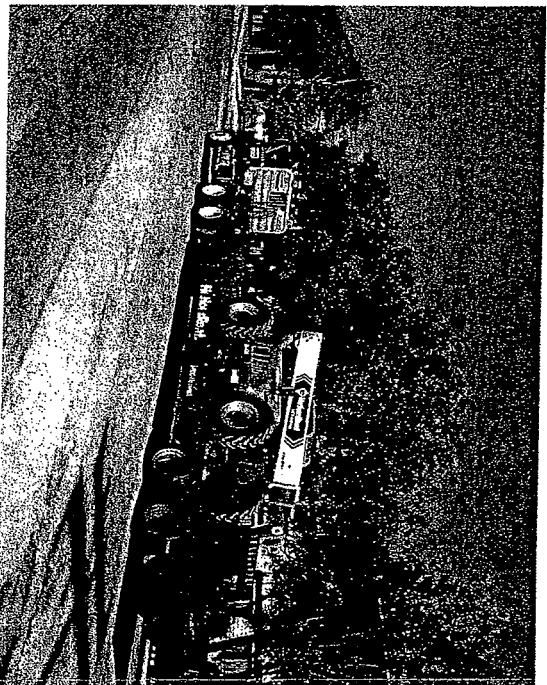


# NationsRent Road Vehicles Do Not Display the Diamond Logo

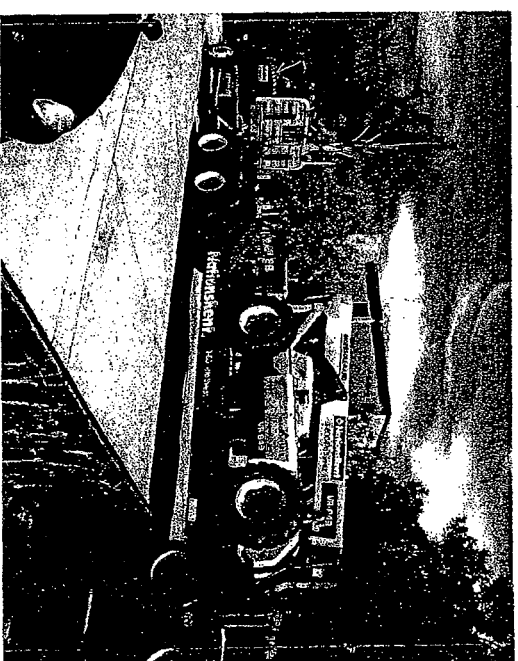
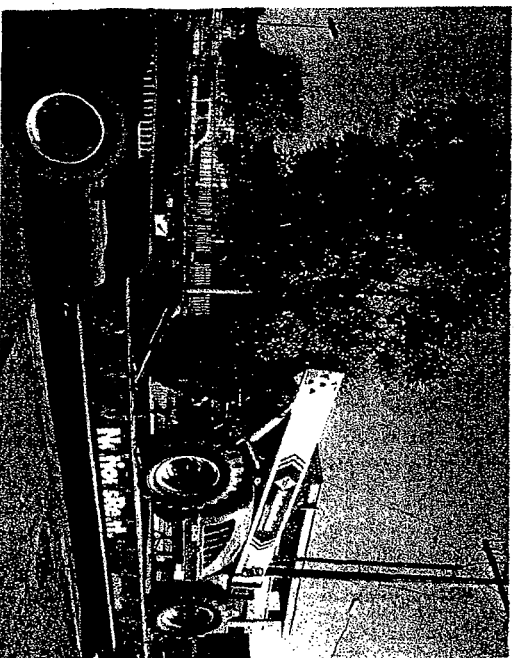
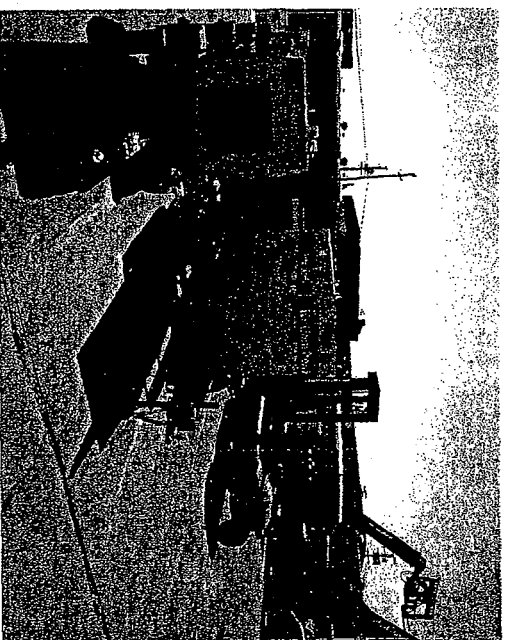
- In 2000 NationsRent considered addressing concerns over a solitary diamond logo on vehicles with a special logo accepted by RSPA.



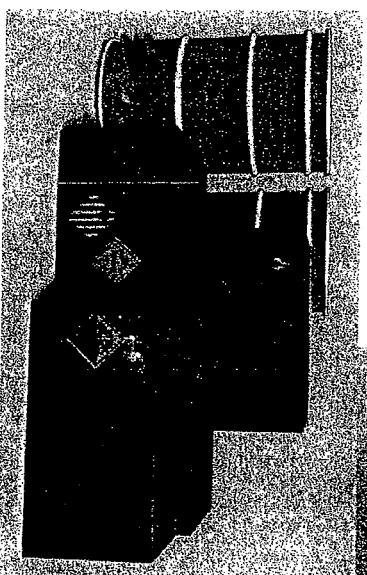
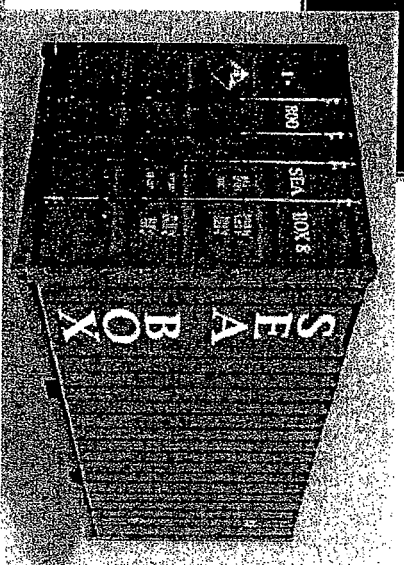
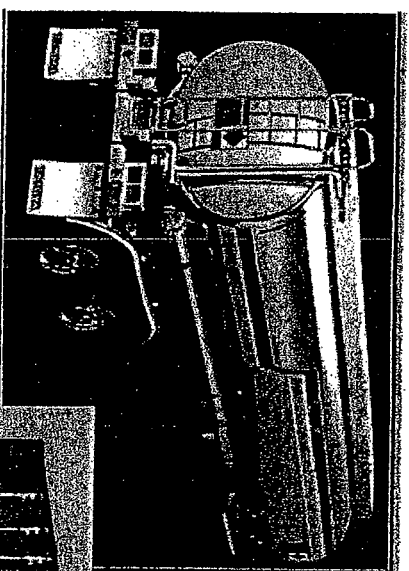
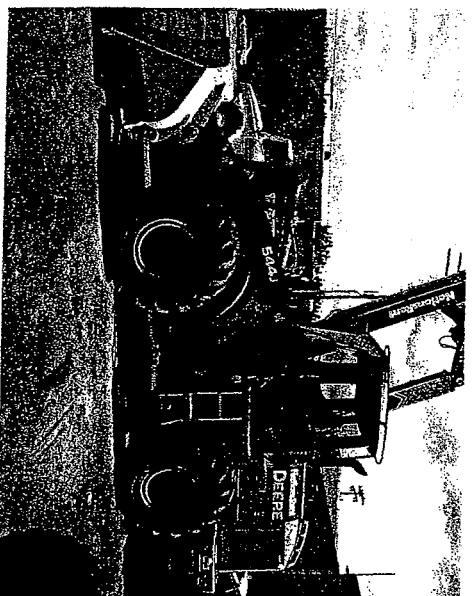
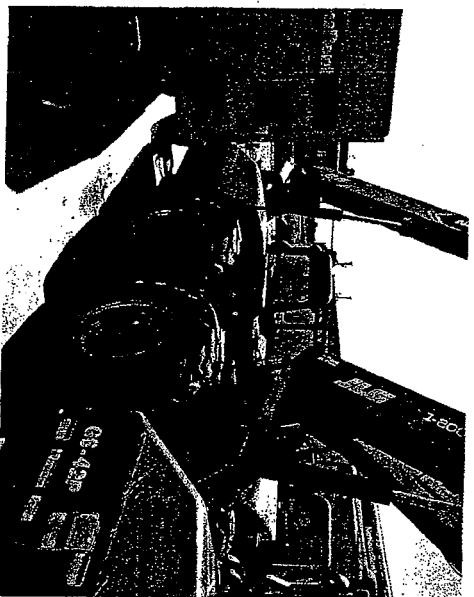
- However, NationsRent now has removed the diamond logo from vehicles in its transportation fleet.



# NationsRent Equipment Generally Displays The Diamond Logo With Other Design Elements



# Equipment Is Readily Distinguished From Vehicles and Packagings That May Carry Hazmats





DLA Piper Rudnick Gray Cary US LLP  
1200 Nineteenth Street, N.W.  
Washington, D.C. 20036-2412  
T 202.861.3900  
F 202.223.2085  
W [www.dlapiper.com](http://www.dlapiper.com)

JOHN R. MIETUS, JR.  
[john.mietus@dlapiper.com](mailto:john.mietus@dlapiper.com)  
T 202.861.6466 F 202.689.8572

May 3, 2006

BY HAND

Hon. Brigham McCown  
Acting Administrator  
Pipeline and Hazardous Materials Safety Administration  
400 Seventh Street, SW, Suite 8410 (PH-2)  
Washington, DC 20590

Re: Request for Reconsideration of Letter Ref. No. 05-1053

Dear Mr. McCown:

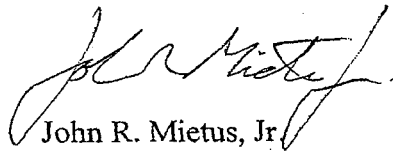
By letter dated July 29, 2005, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") responded to a California Highway Patrol inquiry concerning the application of sections 172.401(b) and 172.502(a)(2) of the Hazardous Materials Regulations ("HMRs") to elements of logos displayed by our client, NationsRent, on its rental equipment. We appreciate the opportunity that you afforded us on April 3, 2006 to meet with you and key PHMSA officials and staff. We've enclosed a copy of the meeting presentation that we used in our discussion with you.

NationsRent recognizes and respects the role that the HMRs play in helping to ensure transportation safety. But as we discussed during the meeting, the company is concerned that the letter could be interpreted to limit NationsRent's ability to display its longstanding logo even in contexts where the sections cited above do not apply -- for example, when displayed on equipment such as aerial platforms -- or where the logo would not be confusingly similar, especially when it is combined with other design or text elements.

Hon. Brigham McCown  
May 3, 2006  
Page 2

For the reasons set forth in the presentation and during our meeting, NationsRent respectfully requests that PHMSA reconsider its position in Ref. No. 05-1053 and issue written guidance that more specifically addresses the application of sections 172.401(b) and 172.502(a)(2) to the NationsRent logo.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Mietus, Jr.", written in a cursive style.

John R. Mietus, Jr.  
Ryan Compton  
Counsel for NationsRent

Enclosure