



U.S. Department of Transportation
Pipeline and Hazardous Material
Safety Administration

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

March 31, 2010

Mr. Clint Peters
REC Advanced Silicon Materials LLC
3322 Road N N.E.
Moses Lake, WA 98837

Ref. No.: 10-0074

Dear Mr. Peters:

This is in response to your request for confirmation from our Office, which serves as the United States Competent Authority with respect to the International Maritime Dangerous Goods Code (IMDG Code), that the provisions contained in the U.S. Hazardous Materials Regulations (49 CFR Parts 171-180) constitute United States Competent Authority approval for the transportation of hazardous materials (dangerous goods) in instances where the IMDG Code specifically permits, or requires, approval by the competent authority. You also ask for confirmation that in such instances, issuance of other documentation by this office is not required.

Your understanding is correct. The provisions contained in the U.S. Hazardous Materials Regulations constitute a U.S. competent authority approval for the transportation of hazardous materials (dangerous goods) in instances where the IMDG Code specifically requires the approval of the competent authority. In such instances, issuance of other documentation by this office is not required. The definition of a "Competent authority approval" codified in 49 CFR 107.1 states that a specific regulation in the U.S. Hazardous Materials Regulations is considered a competent authority approval. This definition applies wherever a competent authority approval is referenced in the IMDG Code.

Sincerely,


Susan Gorsky
Regulations Officer
Office of Hazardous Materials Standards

BARLEN and ASSOCIATES, Inc.
Consulting to the Compressed Gas Industry

- Gorsky
§ 172.102 SP76
§ 172.101-
Special Provision 10-0074
- **Forensic Compressed Gas Incident Investigations**
 - Government Safety Regulations (OSHA)
 - Department of Transportation (US and Canada) Hazardous Material Regulations
 - Cylinder & Valve Testing.

Ryan Posten
Assistant Associate Administrator
Pipeline and Hazardous Materials Safety Administration (PHMSA)
U.S. Department of Transportation

30 January 2010

Re; Meeting request – February 4 or 5, 2010

Hello Ryan,

This letter is to request a meeting with you and if possible Del Billings, Hattie Mitchell, Mark Toughiry, Charles Hochman and whomever is currently the DOT representative to the UN Experts Committee. Preferentially we (John Thompson, a Barlen "Associate", and myself) would like to come to Washington this Thursday or Friday – February 4 or 5. And with such a short notice I realize that some if not all of the names I have listed might not be available. A later date could be scheduled, but the matter has become time sensitive.

Here is the problem. One of the companies I represent (REC Silicon) has run into a recent change (of interpretation) by Germany. REC ships a new product which is a pure silicon powder. The product does not have a UN number and is not separately classified by any shipping codes. The product off-gases hydrogen if it is mixed with water. Based on that we had classified it – using "worst case" classification – as **"UN3132 Water-Reactive, Solid, Flammable, N.O.S. (Silicon Powder) class 4.3 Subclass 4.1 PG II"**

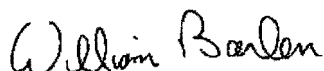
(We are running tests – which I should have this week – on the "Flammable" part. If it isn't actually flammable we could probably use UN2813.)

Our problem is that, UN3132, under the IMDG code, invokes "Special provision 76" Which reads "the transport of this substance shall be prohibited except with special authorization granted by the competent authority of the country of concerned." We had contacted Bob Richard and he had sent the attached letter saying that for material requiring "Special Provision 76" that the 49 CFR reference met the definition. However, probably due to the N.O.S. problems with last year's Dubai incident, "German officials have determined that US CFR entry alone is not sufficient for Competent Authority Authorization".

I'm told that many N.O.S. UN numbers invoke "Special Provision 76" therefore we may just be at the beginning of a much greater problem of US shippers wanting to use 49 CFR as their primary shipping document.

Anyway I would appreciate a meeting to discuss any options we might have.

Sincerely,



William Barlen