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

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

OCT 1 2010

Ms. Michele L. Frozena
Forth Infrastructure & Environment, LLC
2737 South Ridge Road, Suite 600
P.O. Box 12326
Green Bay, WI 54307-2326

Ref. No.: 10-0172

Dear Ms. Frozena:

This responds to your letter dated August 16, 2010 requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if "Waste combustible liquid, N.O.S., NA 1993, III" is the appropriate shipping description for a waste mixture that contains xylene (F003), methylene chloride (F002), and toluene (F005), and has a flashpoint between 190 and 200 degrees Fahrenheit; or, whether the waste material should be described as a Class 9 (miscellaneous) material.

A "combustible liquid" (see § 173.120(b)(1)) is defined as a material that has a flash point above 60.5 degrees Celsius (141 degrees Farenheit) and below 93 degrees Celsius (200 degrees Farenheit) that does not meet the definition of any other hazard class under the HMR. A "hazardous waste" (see § 171.8) is defined as a material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.

Section 173.2a describes how to properly class a material having more than one hazard. In accordance with § 173.2a, the combustible liquid hazard takes precedence over a Class 9 (miscellaneous) hazard. Further, the word "waste" must precede the proper shipping name for a material that meets the definition of a "hazardous waste" (see § 172.101(c)(9)). A material properly classed and described as "Waste combustible liquid, n.o.s., NA 1993, III" must meet both the definition of a "hazardous waste" and "combustible liquid", as outlined above. We cannot make this determination based on the information you provide. It is the shipper's responsibility to

properly class and describe a hazardous material (§ 173.22). If you determine that your material is a hazardous waste and a combustible liquid, and it does not meet the definition of any other hazard class, then it may be appropriately classed and described as it appears above.

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,

Ben Supko
Acting Chief, Standards Development
Office of Hazardous Materials Standards

Foth

Eichenlaub
$173.150
Exceptions
10-0172

August 16, 2010

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Mazzullo:

RE: Hazardous Materials Regulations Requirements

Foth Infrastructure & Environment LLC is sending this letter to request written confirmation of the applicability of the Hazardous Materials Regulations (HMRs) under 173.150 to one of our clients.

A hazardous waste is being shipped in non-bulk packaging. This waste is hazardous because it contains small amounts of xylene (F003), methylene chloride (F002), and toluene (F005). Although it contains these listed materials, the waste is being shipped as a combustible liquid. The flashpoint of the material, when tested, is between 190 and 200 degrees Fahrenheit.

Currently, the company is shipping the hazardous waste with the following shipping name; "Waste combustible liquid, N.O.S., NA 1993, III". Is this the correct proper shipping name or should the hazardous waste drum be shipped as a Class 9 flammable liquid due to the fact that it contains the F002, F003 and F005 constituents in small percentages?

If your finding states that it should be a Class 9 flammable liquid, please provide the regulatory framework for that decision.

A written response is appreciated. Please send your response to Michele Frozena at michele.frozena@foth.com or at Foth Infrastructure & Environment, LLC, 2737 South Ridge Road, Suite 600, P.O. Box 12326, Green Bay, Wisconsin, 54307-2326. If you have any questions, please call Michele Frozena at (920)496-6767.

Sincerely,

Foth Infrastructure & Environment, LLC

Michele L. Frozena
Lead Environmental Scientist

Sheryl Pham
Lead Engineer

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