U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

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

FEB 17 2011

Ms. Jennifer Eberle,
Veolia ES Technical Solutions, L.L.C
1 Eden Lane
Flanders, NJ 07836

Reference No.: 10-0233

Dear Ms. Eberle:

This is in response to your email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transportation of Division 4.1 (self-reactive) and Division 5.2 (organic peroxide) materials under the lab pack exception found in § 173.12. Specifically, you ask whether the amendments of the HM-233A final rule, "Hazardous Materials: Incorporation of Special Permits into Regulations" published on May 14, 2010 in the Federal Register (74 FR 53413) authorize the transport of Division 4.1 and Division 5.2 materials, that are required to be temperature controlled, as lab packs under § 173.12(b) of the HMR.

A hazardous material, such as Division 4.1 or Division 5.2, that is required to be temperature controlled may be offered for transportation in a lab pack packaging that complies with § 173.12(b) provided this packaging also complies with the requirements for a temperature controlled packaging prescribed § 173.21(f). Under the HMR, any package that contains any material likely to decompose with a self-accelerated decomposition temperature (SADT) of 50 °C (122 °F) or less, or polymerize at a temperature of 54 °C (130 °F) or less with an evolution of dangerous gas when decomposing or polymerizing must not be transported unless the material is stabilized or inhibited in a manner that precludes such decomposition (see § 173.21(f), introductory paragraph). Decomposition is achieved when a material meets or exceeds its specific control temperature and can be prevented by transporting the material under controlled temperature conditions prescribed in § 173.21(f)(1), (f)(2) or (f)(3), or by mixing the material with an inert, non-combustible absorbent material, such as clean sand or non-acidic clay, in an amount that temperature control of the material is no longer required.

On May 14, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published final rule HM-233A, which incorporated widely-used special permits into the HMR. As part of this rulemaking, Special Permit DOT-SP 13192, which authorized the transport of waste Division 5.2 materials in lab pack packagings, was incorporated into the HMR effective October 1, 2010. Division 4.1 materials were already permitted in lab packs under § 173.12(b)(1). Section 173.12(b) permits certain waste materials to be placed in non-specification packagings that conform to the requirements in this paragraph. Hazardous materials placed in lab packs are also subject to additional safety control measures designed to mitigate the risks presented by these materials, such as quantity limitations, additional packaging, and segregation requirements. However, these control measures do not eliminate the requirement that lab packs containing materials required to be temperature controlled must also comply with § 173.21(f)(1).

I hope this satisfies your inquiry.

Sincerely,

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

Benedict
§173.12(b)
Exceptions for
Waste Materials
10-0233

VEOLIA
ENVIRONMENTAL SERVICES

November 4, 2010

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

RE: Request for Interpretation Regarding the Management of Division 5.2 Organic Peroxide and Division 4.1 Self-Reactive Materials as Lab Packs Under 173.12(b)

To Whom It May Concern:

Please accept this letter as a request for a formal interpretation from your office. On May 14, 2010, PHMSA issued a final rule entitled "Hazardous Materials: Incorporation of Special Permits into Regulations" (HM-233A) which amended the Hazardous Materials Regulations by incorporating provisions contained in certain special permits. The effective date of the final rule was October 1, 2010.

One of the amendments adopted in HM-233A was to authorize the transportation of waste Division 4.1, PG I material and Division 5.2 organic peroxide material in lab packs under §173.12(b).

Veolia requests clarification on whether these amendments authorize the management of Division 4.1 (self-reactive) and Division 5.2 (organic peroxide) materials that are required to be transported using temperature controls as lab packs under §173.12(b)?

Based on Veolia's 25 years of experience managing shipments of waste hazardous materials, we do not believe managing these high-risk materials under the lab pack exception is appropriate and would in fact, diminish the safety of shipments of waste materials requiring temperature controls. Authorizing the shipment of 5.2 and 4.1 materials for which temperature controls are required under §173.12(b) allows for the packaging of multiple different types of temperature sensitive materials in the same outer (less stringent) packaging and the assignment of an overall single generic shipping name with relief from indicating the concentration range in the shipping description. Veolia submitted comments expressing our concern with allowing this activity during the HM-233A rulemaking process however although our comments were received into the docket, they were never considered or adequately acknowledged by PHMSA.

Your written response to this question is greatly appreciated. If you require any further information regarding this request please feel free to contact Tom Baker at tom.baker@veoliaes.com / 973-691-7330 or Jennifer Eberle at jennifer.eberle@veoliaes.com / 973-448-4209.

Thank you,

Jennifer Eberle
Manager, Transportation Compliance

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