



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

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

JUN 30 2011

Ms. Merrie Schilperoort
Hazardous material Training Manager
EnergySolutions, Inc.
2345 Stevens Drive, Suite 240
Richland, Washington 99354

Ref. No. 11-0049

Dear Ms. Schilperoort:

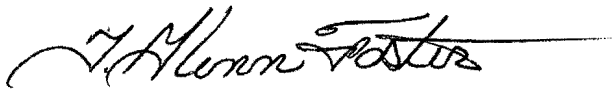
This responds to your February 22, 2011 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your letter, you indicate that a company intends to reoffer containers (aerosol cans) manufactured under Special permit DOT-SP 12995 for disposal or recycling after use. You ask whether such aerosol cans that have been dented or have missing spray nozzles or caps may be shipped in accordance with the limited quantities of compressed gas provisions under § 173.306(k), or if they must be shipped under the terms and conditions of the special permit. Your questions are paraphrased and answered as follows:

- Q1. Is the end-user of an aerosol product subject to the terms and conditions of a special permit granted to the aerosol manufacturer when offering such products for transportation in commerce?
- A1. The answer is yes. In accordance with § 173.22a(b), unless indicated otherwise, a person may only use a packaging authorized in a special permit subject to the terms specified therein.
- Q2. Special Permit DOT-SP 12995 excepts aerosols manufactured by a certain company from the hot water bath test prescribed for all aerosols in § 173.306(a)(3)(v). Section 173.306(k) excepts aerosols from certain HMR requirements when transported for recycling or disposal if they meet the conditions specified in § 173.306(a)(3) (to include the hot water bath test). Is it permissible to combine the authorization in § 173.306(k) (missing nozzles) with the authorization in DOT-SP 12995 (hot water bath test) and transport the subject aerosols?
- A2. The answer is no. The exceptions for aerosols provided in § 173.306(k) require full compliance with § 173.306(a)(3). Special Permit DOT-SP 12995 excepts aerosols from the regulation in § 173.306(a)(3)(v) in that each container will be tested as specified therein in lieu of the required hot water bath test.

- Q3. Is it permissible to rename the containers under the description "Receptacles, small, containing gas (UN2037)?"
- A4. The answer is no. As noted in your letter, the special permit does not indicate such an authorized shipping description in Section 6.
- Q5. If the answer to the previous two questions is no, what is the appropriate method for shipping the aerosols?
- A5. Under § 107.105, you may apply for your own special permit that authorizes shipment of the aerosols for recycling or disposal. You may contact our Permits and Approvals Division at (202) 366-4535 for more information.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Glenn Foster", with a long horizontal flourish extending to the right.

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



February 22, 2011

FS-TN-LT-11-006

Mr. Charles E. Betts, Director
Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590-0001

Engrum
§ 173.306(a)(3)
Applicability
11-0049

SUBJECT: Aerosols Manufactured and Distributed Under DOT Special Permit Being Offered
For Transportation For Recycling Or Disposal

Dear Mr. Betts:

A company is the end user of aerosol products which would normally be shipped as “UN1950, Aerosols, 2.1” but are being used as materials of trade in maintenance and other construction activities. The cans were manufactured and distributed under DOT-SP 12995. The special permit provides exemption from 49 CFR 173.306(a)(3)(v) and instead requires that each container is tested as specified in the special permit in lieu of the required hot water bath test. After use, the cans are to be shipped for recycling or disposal. Some of the aerosol cans are partially full, dented, and are missing caps or nozzles.

A previous letter of interpretation, Ref. No. 10-0220, states that cans without nozzles are no longer defined as aerosol cans and should be renamed, for example, “Receptacles, small, containing gas”.

49 CFR 173.306(k) allows cans which conform to 173.306(a)(3), which includes the hot water bath testing, to be shipped without caps and nozzles but does not provide the instruction to rename the cans and is silent about special permit requirements when shipping for recycling or disposal.

Mr. Charles Betts

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QUESTIONS:

1. Does the USDOT expect the end user of these aerosol products to be aware of and follow special permit requirements when shipping for recycling or disposal?
2. If the answer to Question 1 is YES, may the aerosol cans be shipped per 173.306(k) AND the special permit because it provides equivalent safety even though 173.306(k) is for cans which conform to 173.306(a)(3)(v)?
3. If the answer to Question 2 is YES, should the cans be renamed, "Receptacles, small, containing gas" as per the above mentioned letter of interpretation or is that not allowed because the special permit does not show that name in the special permit's specific list of Hazardous Materials Descriptions?
4. If the answer to Question 2 or Question 3 is NO, what is the appropriate way to ship the aerosol cans for recycle or disposal?

If you have any questions, please do not hesitate to contact me at (509) 375-9504 or mcschilperoort@energysolutions.com. Your prompt reply is greatly appreciated.

Sincerely,



Merrie Schilperoort
Hazardous Material Training Manager
EnergySolutions, Inc.

MCS/jil

cc: Contracts File/LB