



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

AUG 12 2011

Mr. Charles Denny
Duke Energy Corporation
526 South Church Street, EC13K
Charlotte, NC 28202

Reference No.: 11-0169

Dear Mr. Denny:

This responds to your email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the bulk and non-bulk packaging instructions for asbestos. You note in your incoming letter that in the § 172.101 Hazardous Materials Table (HMT), the entry for "Asbestos," NA2212 refers to packaging instructions specified in § 173.216 for non-bulk packaging requirements, and § 173.240 for bulk packaging requirements. You also note that some of the packaging options specified in § 173.216 may be considered bulk packagings. Your questions are paraphrased and addressed as follows:

Q1. Are all packaging options specified in § 173.216 considered "non-bulk" packagings?

A1. The answer is no. Although the entry for "Asbestos," NA2212 specified in Column 8B of the HMT suggests that § 173.216 contains only non-bulk packaging requirements, some of the packaging options provided may meet the bulk packaging definition specified in § 171.8 and, therefore, be considered a bulk packaging for the purposes of transportation.

Q2. If both "non-bulk" and "bulk" packaging options are provided in § 173.216, which of the packaging options provided in this section are considered "non-bulk" and which are considered "bulk"?

A2. As specified in § 171.8, a bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment. A Large Packaging in which hazardous materials are loaded with an intermediate form of containment, such as one or more articles or inner packagings, is also a bulk packaging. Additionally, a bulk packaging has a maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid; a maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or a water capacity greater than 454 kg (1000 pounds) as a receptacle for a

gas as defined in § 173.115 of the HMR. Packagings specified in § 173.216 that meet this definition must be considered a bulk packaging.

- Q3. If only “non-bulk” packaging options are provided in § 173.216, is asbestos that is offered for transportation and transported in rigid, leak-tight packagings such as portable tanks, hopper-type rail cars, or hopper-type motor vehicles required to be labeled with the class 9 label and marked with the proper shipping name and UN/NA number on the outside of the portable tank, hopper-type rail cars, or hopper-type motor vehicles?
- A3. As stated above, § 173.216 identifies both bulk and non-bulk packagings. Rigid, leak-tight packages such as portable tanks, hopper-type rail cars, or hopper-type motor vehicles meeting the definition of bulk packaging provided in § 171.8 must be considered bulk packaging for transportation purposes. The general labeling requirements for both bulk and non-bulk packagings are specified in § 172.400.

We appreciate your bringing this issue to our attention. PHMSA will attempt to improve the clarity of this issue in a future rulemaking. I hope this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name and title.

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

Benedict
§173.216
Bulk Packaging
11-0169

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Tuesday, July 19, 2011 1:44 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Hazmat Information Center Feedback: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications

Hi Carolyn,

We received the following request for a letter of interpretation at the HMIC.

Thanks,
Victoria

Victoria Lehman
Hazmat Information Center (HMIC)
<http://phmsa.dot.gov/hazmat/info-center>
(202) 366-1035

-----Original Message-----

From: PHMSA-Feedback [mailto:PHMSA-Feedback]
Sent: Monday, July 18, 2011 2:04 PM
To: PHMSA HM InfoCenter; PHMSA Webmaster
Subject: Hazmat Information Center Feedback: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications

In talking with the DOT helpline, it was recommended that I submit the following for a formal interpretation. I am confused as to 49 CFR 173.216 being only reference as "Non-Bulk" packaging (Column 8B) and not also as "Bulk" packaging (Column 8C).

Per HMR Table, Column 8B Non-Bulk Packaging instructions, individuals are to go 49 CFR 173.216 for non-bulk packaging requirements. Per HMR Table, Column 8C Bulk Packaging instructions, individuals are to go to 49 CFR 173.240 for bulk packaging requirements. Based on this, one could assume that all packaging under 49 CFR 173.216 is considered "Non-Bulk", since "216" is not listed in Column 8C for "Bulk" packaging.

Are all packaging instructions provided in 49 CFR 173.216 considered "Non-Bulk" or are some of the packaging instructions in 49 CFR 173.216 "Bulk"? If some of the packaging instructions under 49 CFR 173.216 is considered "Bulk" packaging, shouldn't "49 CFR 173.216" be referenced in Column 8C too?

If both "Non-Bulk" and "Bulk" packaging is provided in 49 CFR 173.216, can you clarify which of the packaging options provided in this section is considered bulk and which is considered non-bulk. This would help in determining how to properly mark and label the asbestos packages based on whether the packaging is considered "Non-Bulk" or "Bulk".

If only "Non-Bulk" packaging is provided in 49 CFR 173.216, is asbestos that is offered for transportation and transported in rigid, leak-tight packages, such as portable tanks, hopper-type rail cars, or hopper-type motor vehicles required to be labeled with Class 9 label and marked with the Proper Shipping Name and UN/NA number for asbestos on the outside of the portable tanks, hopper-type rail cars or hopper-type motor vehicles?

My opinion is that you mean for some of the packaging requirements in 49 CFR 173.216 to be considered as "Bulk" packaging and marked accordingly, but need clarification as to DOT's intent. Your clarification on these questions is greatly appreciated.

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