



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

MAY 16 2012

Mr. Carlisle Smith
Supervisor Hazardous Materials Program
Transportation Department
Enforcement Division
180 East Broad Street
Columbus, Ohio 43215-3793

Ref No. 11-0306

Dear Mr. Smith:

This responds to your December 12, 2011 email regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a 500-gallon bulk package containing diesel fuel residue, transported on public roads, in a commercial vehicle, for personal use is subject to the requirements of the HMR. You reference two letters of interpretation issued by PHMSA, one issued on April 16, 2004 (Ref. No.: 03-0223) and the other issued on May 11, 2011 (Ref. No.: 11-0007).

Under Federal hazardous materials transportation law (Federal hazmat law), "transports" or "transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement." Federal hazmat law also defines "commerce" as "trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; that affects trade or transportation between a place in a State and a place outside of the State; or on a United States-registered aircraft." (See 49 U.S.C. 5102(1) and (13).) Historically, PHMSA also interprets "in commerce" to mean trade or transportation in furtherance of a commercial enterprise. This interpretation is based in part on the Federal hazmat law's definition of "person" as including "a government, Indian tribe, or authority of a government or tribe that (i) offers hazardous material for transportation in commerce; (ii) transports hazardous material to further a commercial enterprise; or (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce...." See 49 U.S.C. 5102(9); see also 49 CFR § 171.8.

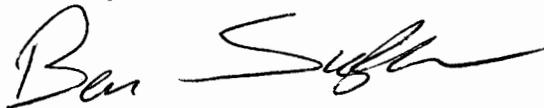
PHMSA has reviewed both letters and stands by the May 11, 2011 letter which states that non-commercial transportation of hazardous materials is not subject to the HMR. In a final rule [Docket No. RSPA-98-4952 (HM-223)], titled "Applicability of the Hazardous

Materials Regulations to Loading, Unloading, and Storage,” which became effective on June 1, 2005, we revised § 171.1 to clarify the applicability of the HMR to transportation functions. We believe that the inconsistency in the responses is a result of a better understanding of the meaning behind the term “non-commercial” transportation under the HMR.

As a general matter, the transportation of a hazardous material by motor vehicle for personal use of the driver is not subject to requirements in the HMR – although it may be subject to other Federal, State, or local requirements. In fact, guidance issued by the Federal Motor Carrier Safety Administration regarding 49 CFR § 390.5 states that “if the driver is operating a commercial motor vehicle at the direction of the motor carrier, it is considered interstate commerce and is subject to the Federal Motor Carrier Safety Regulations (FMCSRs). If the motor carrier is allowing the driver to use the vehicle for private personal transportation, such transportation is not subject to the FMCSRs.” Your request for interpretation did not contain enough information for PHMSA to confirm whether the driver was transporting the 500-gallon bulk package containing diesel fuel residue for personal use, nor did it indicate that the motor carrier allowed the driver to use the vehicle for personal transportation. Any hazardous material that the driver is transporting on behalf of the motor carrier is subject to the HMR.

I hope this answers your inquiry. If you have further questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Supko". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ben Supko
Acting Chief, Standards Development Branch
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

Winter
\$173.29
\$171.8

From: INFOCNTR (PHMSA)
Sent: Monday, December 12, 2011 2:02 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Hazmat Information Center Feedback: General Information, Regulations, and Definitions (Sections 171.1 & 171.26)

Empty
11-0306

Hi Carolyn,

We received the following request for a letter of interpretation.

Thanks,
Victoria

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

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

From: PHMSA-Feedback
Sent: Monday, December 12, 2011 10:27 AM
To: PHMSA HM InfoCenter; PHMSA Webmaster
Subject: Hazmat Information Center Feedback: General Information, Regulations, and Definitions (Sections 171.1 & 171.26)

To: Charles E. Betts,
Director, Office of HM Standards
Dear Mr. Betts,

I am requesting clarification on the Hazardous Materials Regulations application of the transportation of personal belongings by a driver who operates a commercial vehicle in interstate commerce.

Recently an Ohio Commercial Vehicle Inspector stopped a tractor trailer combination in interstate commerce. The vehicle was carrying construction equipment from a job site in Kentucky to a location in Ohio. The vehicle was also carrying a 500 gallon bulk package that the driver stated contained a residue of diesel fuel. The CMV did not display placards or I.D. markings, the driver could not produce a shipping paper. When questioned by the Inspector, the driver stated that tank came from the job site and he "took it upon himself to add the 500 gallon tank to take home for personal use." The driver could not produce a bill of sale or a letter from his employer supporting his claim.

A review of PHMSA Interpretation 03-0223 states that hazardous materials intended for personal use, placed onto a commercial vehicle and transported on a public road, are subject to the HMR. Conversely PHMSA Interpretation 11-0007 contradicts Interpretation 03-0223, stating "a driver who transports his/her own personal belongings (e.g. battery operated cell phones, medical devices and GPS devices, gas cans etc.) for personal, non commercial use is clearly not in commerce."

In closing, I am requesting a formal response regarding the applicability of the Hazardous Materials Regulations to the scenario described above.

Thank you for your time,
Sincerely,

Carlisle Smith, Supervisor Hazardous Materials Program Transportation Enforcement Division
Public Utilities Commission of Ohio 180 Broad Street Columbus, OH 43215

Name: Carlisle Smith
Organization: Public Utilities Commission of Ohio
Email: carlisle.smith@puc.state.oh.us
Address: 180 East Broad Street
City: Columbus
Zip Code: 43215
Phone: 614-296-2067
FAX: 614-728-2133



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

APR 16 2004

400 Seventh St., S.W.
Washington, D.C. 20590

Mr. Lloyd Heacock
3219 Lowden Street
Kalamazoo, MI 49008-4603

Reference No.: 03-0223

Dear Mr. Heacock:

This is in response to your September 5, 2003 letter and subsequent telephone conversations with members of my staff regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a five-gallon container of gasoline transported on public roads, in a company vehicle, for personal use is subject to the requirements of the HMR. You state that the gasoline was intended to be used to fill the gas tank of your personal vehicle.

The answer is yes. As specified in § 171.1, the HMR govern the transportation of hazardous materials in intrastate, interstate and foreign commerce. Accordingly, hazardous materials that are transported by persons for personal use in their personal vehicles are not subject to the HMR. However, under the scenario described in your letter, although the gasoline was for personal use, it was placed onto a commercial vehicle and transported on a public road. The transportation is, therefore, "in commerce," and the gasoline is subject to the requirements of the HMR.

You also asked whether the materials of trade exception (MOT) applies to this scenario. The answer is yes, the MOT exception applies to the scenario you described, provided all applicable provisions in §§ 171.8 and 173.6 are met. The definition of MOT in § 171.8 states:

A Material of trade means a hazardous material, other than a hazardous waste, that is carried on [a] motor vehicle -

- (1) For the purpose of protecting the health and safety of the motor vehicle operator or passenger;
- (2) For the purpose of supporting the operation or maintenance of a motor vehicle (including auxiliary equipment); or
- (3) By a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle.



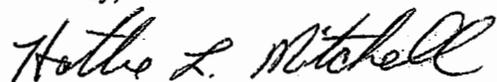
030223

171.8,
173.6

It is our opinion that the definition, specifically item (2), covers the carriage of gasoline in the scenario you describe and, therefore, the MOT exception applies if all provisions for MOT in § 173.6 are met.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the typed name.

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Earle M. Jorgensen
Company

FAX 1-202-366-3012

Betts
§171.8(2)
§173.6
Applicability
03-1223



TO: EDWARD MAZZULLO

DATE: DIRECTOR, OFFICE OF HAZARDOUS MATERIAL STANDARDS US DOT

MY NAME IS LLOYD HEACOCK OF KALAMAZOO, MICHIGAN. I DRIVE A
FLAT BED TRACTOR TRAILER HAULING VARIOUS BARS OF STEEL.

I AM REQUESTING A FORMAL GUIDANCE RESPONSE REGARDING
THE TRANSPORTATION OF A FIVE GALLON GAS CAN FOR MY OWN
PERSONAL USE. WOULD THIS BE CONSIDERED IN
COMMERCE, IF SO WOULD THIS QUALIFY AS A MATERIAL
OF TRADE EXCEPTION UNDER DEFINITION 171.8(2)

WHERE IT STATES, FOR THE PURPOSE OF SUPPORTING THE OPERATION
OR MAINTENANCE OF A MOTOR VEHICLE.

IS THIS LEGAL TO DO?

IF YOU HAVE ANY QUESTIONS WHATSOEVER PLEASE CALL ME
AT THE FOLLOWING NUMBERS 1(269) 324.4867 OR 1(269) 344.4882

PLEASE RETURN CORRESPONDENCE TO
LLOYD HEACOCK
3219 LOWDEN ST
KALAMAZOO MI 49008-4603



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

1200 New Jersey Avenue, SE
Washington, DC 20590

MAY 11 2011

Paul D. Borghesani
The Law Offices of Paul D. Borghesani
307 S. Main Street, Suite 300
Elkhart, Indiana 46516

Ref. No.: 11-0007

Dear Mr. Borghesani:

This responds to your December 14, 2010 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the HMR apply to the transportation of personal belongings by a driver who is operating a leased pick-up truck in commerce. The belongings in question include: battery operated cell-phones, medical devices and GPS devices, and gas cans used to fuel the driver's non-commercial vehicles and machinery. You also reference a letter of interpretation issued by PHMSA on April 29, 2010 (Ref. No. 09-0220), which clarified that transportation of scuba tanks for personal, non-commercial use (e.g., recreation, sport fishing) is not subject to the HMR.

A driver who transports his/her own personal belongings (e.g., battery operated cell phones, medical devices and GPS devices, gas cans, etc.) for personal, non-commercial use is clearly not in commerce. Therefore, in the scenario you describe, those personal belongings are not subject to the HMR. However, any hazardous material that the driver is transporting on behalf of the motor carrier is in commerce and subject to the HMR.

You also refer to the Compliance, Safety, Accountability (CSA) 2010 program in your letter. The Federal Motor Carrier Safety Administration implements the CSA 2010 program. Information on CSA 2010 is available at the following website: <http://csa.fmcsa.dot.gov/>.

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

Sincerely,

Ben Supko
Acting Chief, Standards Development Branch
Standards and Rulemaking Division

THE LAW OFFICES
OF
PAUL D. BORGHESANI

Eichenlaub
3171.8
Definitions
11-0007

December 14, 2010

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

RE: Personal Items

Dear Ms. Mitchell:

This firm represents numerous motor carriers registered with the Federal Motor Carrier Safety Administration ("Administration") and engaged in the transportation of property pursuant to either a certificate or permit issued by the Administration. The registered motor carriers are leasing equipment (i.e. pick-up trucks) from owners that are also operating the leased equipment when transporting property for the motor carrier. As provided in 49 CFR Part 390, the motor carriers leasing commercial motor vehicles which transport property in interstate commerce are required not only to be knowledgeable of and comply with the Federal Motor Carrier Safety Regulations ("Safety Regulations") but also must instruct the owner/drivers as well as require their compliance with these Safety Regulations. With the implementation of CSA 2010, the motor carriers represented by this firm have expanded the scope of instructions as well as compliance accountability with all applicable Safety Regulations including increased awareness of and compliance with the Hazardous Materials Regulations in 49 CFR Parts 171-180.

During the course of instructing the owner/drivers, several questions have arisen concerning the Personal Items that the owner/drivers of the lease equipment may have in/on the equipment while operating the equipment in the furtherance of the commercial enterprise of the motor carrier. These Personal Items include battery operated cell phones; battery-operated medical devices (CPAP); battery-operated GPS devices, and occasionally small, empty, fuel containers ranging from five (5) to thirty (30) gallons, the latter used for personal uses including the fueling of off-road equipment, boats, and other non-commercial motor vehicles. The batteries utilized for the cell phones and/or the GPS units are primarily lithium ion and are rechargeable. The batteries utilized for the CPAP machine are either lithium ion or sealed lead acid. The batteries are more specifically described in the attachments to this correspondence.

Consideration has been given to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") Interpretation Number 9-0220. Therein, the PHMSA noted that under the Federal Hazardous Materials Transportation Law the term "in commerce" means transportation in

307 S. Main Street, Suite 300 • Elkhart, Indiana • 46516
Telephone (574) 389-0804 • Fax (574) 293-2214
Email pdborglaw@verizon.net

furtherance of a commercial enterprise. Based thereon, it was concluded that "the individual who transports his/her own scuba tank for personal, non commercial use (e.g., recreation, sport fishing) is not subject to the HMR."

The questions being presented include the following:

1. Is the individual owner/driver having the described battery-operated Personal Items in the leased equipment while the owner/driver is operating the leased equipment in the furtherance of the commercial enterprise of the motor carrier subject to the Hazardous Materials Regulations?

2. In these circumstances, is the motor carrier subject to the Hazardous Materials Regulations?

As noted, the Personal Items of the owner/drivers also include empty fuel tanks having a capacity of five (5) to thirty (30) gallons that the owner/drivers use to fuel off-road equipment, boats, and other non-commercial motor vehicles of the owner/driver. Generally, the equipment, boats and other non-commercial vehicles are gasoline powered. As with the personal battery-operated items, the leased equipment is being utilized to transport other property in furtherance of the commercial enterprise of the motor carrier and the fuel tanks are not required by the motor carrier for such transportation.

3. Noting that 49 CFR Part 390.3 excepts from the applicability of the rules in subchapter B the occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise also except the applicability of the Hazardous Materials Regulations for the occasional transportation of the described personal property of the owner/drivers herein?

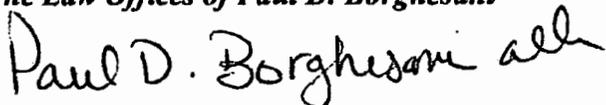
4. Are the described fuel tanks utilized for gasoline either empty or full considered materials of trade as noted in 49 CFR Part 392.51 and as defined in 49 CFR Part 171.8?

5. If the small amounts of fuel are considered materials of trade, what if any provisions of the Hazardous Materials Regulations would be applicable to the individual owner/driver as well as the motor carrier leasing the equipment from the owner/driver?

The consideration of the foregoing and response(s) by the PHMSA will serve to enhance the instruction and compliance with the Safety Regulations including the Hazardous Materials Regulations by the motor carriers and the owner/drivers leasing equipment to the motor carriers.

Very Truly Yours,

The Law Offices of Paul D. Borghesani



Paul D. Borghesani

PDB/alh

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Availability: Usually Ships in 24 Hours

Product Code: BG175

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Super CPAP Battery Pack for CPAPs and BiPAPs - 175 Wh

Description

Battery Type: Lithium Ion

Here it is. The ultimate portable lithium-ion battery pack for your CPAP machine and any other small electronics you may own. This small lightweight battery pack is ideal for car camping, RV camping, boating and any other activity that may take you "off the grid". The CPAP battery pack is available in three capacities - 175 Wh, 250 Wh, and 444 Wh. Now there's no need to leave home without power.

This 175 Wh battery will run a CPAP machine at the most commonly prescribed pressure settings for approximately 9 - 12 hours. See the chart below for more battery capacity information.

Don't forget to buy the 12V cord for your specific CPAP machine! The Super CPAP Battery Pack doesn't include the manufacturer-specific cord you'll need.

CPAP(Average Usage Time in Hours)

Pressure (cm/H2O)	BG-C175 (12.5Ah)	BG-C250 (18.5Ah)
4	18	25
7	12.7	18.8
10	9.7	14.3
13	8.2	12.1
16	7.1	10.5
20	6.6	9.8

CPAP Battery Features

- Available in three different sizes and capacities (this 175 Wh battery is our lowest capacity model)
- Includes soft side carrying case
- Receives and delivers power from a cigarette lighter adapter built right in to the battery.
- Can also be used to power other devices such as portable DVD players. Any device that can operate from 12V DC Current.
- Perfect for camping!
- Includes charger
- Power gauge on battery indicates remaining usage time

CPAP Battery Important Notes

- This CPAP Battery is compatible with all makes and models of CPAP machines.

Related Products...

IntelliPAP 12V Cord
Our Price: \$20.00

Add

12V Cord

Our Price: \$27.00

Add

ResMed 24V Converter
Our Price: \$89.00

Add

S8 Series 12V Converter
Our Price: \$79.99

Add

PowerVerter Inverter - 150 W
Our Price: \$45.00

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CPAP Battery Pack 250 Wh
Our Price: \$435.00

Add

CPAP Battery Pack 444 Wh
Our Price: \$795.00

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 - 06/08/10 - ComfortGel Blue Design...
 - 04/20/10 - EncoreViewer 2.0 Sleep Apnea Analysis Software
 - 03/26/10 - How Often Should CPAP Equipment Be Replaced?
 - 02/09/10 - What's Ahead in CPAP Design?
 - 12/18/09 - Health Spending

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4/8/09 - Are
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Powered CPAP...

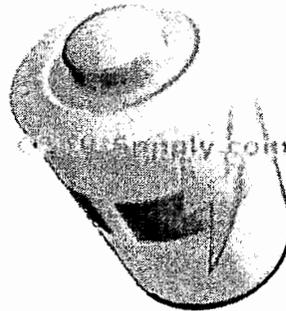
7/22/07 -
Where's my
REMstar...

7/16/07 - Is
CPAP Pressure...

- The ResMed S8 and S9 requires the additional use of the ResMed DC converter or inverter (depending on model). Click here for the S8 Converter. Click here for the S9 Inverter.
- Using this CPAP battery with an inverter will reduce the usage times specified above.
- All CPAP battery times are estimates only. Multiple factors will affect usage times.
- These CPAP batteries do not have to be completely discharged before recharging
- **IMPORTANT:** This battery will ONLY work on PAP devices that can use DC power. The PAP device must have a 12V barrel connector, and be capable of using a DC adaptor cable from the PAPs manufacturer.
- Does your PAP not have a DC connector, such as the Fisher & Paykel models? You can also use our 150 watt sine wave power inverter also featuring a built in USB charge port to plug directly into the battery and use your standard AC power cord on the PAP to plug right into the battery.
- Addendum to user manual: After charging the battery, hold the battery test button for 30 seconds or until the test lights display. This will activate the battery for use.

CPAP Battery Specifications

- Dimensions 9.8" x 5.9" x 1.3"
- Included In Box Battery, DC Adaptor cable for ResPironics M Series machines, recharging power supply.
- Warranty 1 Year. We handle all warranty claims.
- Weight 3 pounds.
- Prescription Required NO
- Battery Protection Built in circuitry protects against thermal run-away and overheating.
- Charge Current 2500 mAh
- Chemistry High capacity, premium grade lithium-ion cells
- Output Current 8A max
- Output Voltage 12 Volts
- Power Gauge Five Stage charge level indicator
- Recharge Time 4-5 hours.
- MSRP (Manufactures Suggested Retail Price) \$375



Take your CPAP machine anywhere with our CPAP battery!

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• Universal Portable Battery Pack **\$299.00**

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Universal Portable Battery Pack



Our Price: \$299.00

Qty: 1

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03/26/10 - How Often Should CPAP Equipment Be Replaced?

02/09/10 - What's Ahead in CPAP Design?

12/18/09 - Health Spending

Resprionics Universal Portable Battery Pack



Description

Battery Type: Sealed Lead-Acid

The Resprionics Universal Portable Battery Pack is designed to allow you to power your CPAP machine anywhere life takes you. Coupled with the DC power cord specific to your particular CPAP machine model, the Universal Portable Battery Pack will power a CPAP machine for up to 20 hours at a pressure setting of 12. As the name suggests, the Universal Portable Battery Pack can be used with any CPAP machine manufactured by any company.

The Universal Portable Battery Pack is a **sealed lead-acid battery** that can be used with any make and model of CPAP machine. The correct DC power cord is necessary, and in some cases (for example, with the ResMed S8 or S9 machines) an inverter must be placed between the battery and the CPAP machine. If you don't know exactly what you need, give us a call and we can help you!

Features

- 14 pounds - smaller and lighter than traditional gel cell, marine-type batteries
- Carrying case
- One year warranty
- Average run times of 16 to 24 hours for most CPAP machines
- Smart charger to prevent overcharging of battery
- LED lights to indicate charging level

Contents

- Sealed lead-acid battery
- Charger with standard power cord for recharging from wall outlet
- Carrying case
- **NOTE: Don't forget that you'll need the 12V cord specific to your CPAP machine in order to be able to plug your CPAP machine into this battery.**
- **NOTE: This battery DOES NOT include a 12V cord or 12V cord adapters for your CPAP machine.**
- **NOTE: Our lithium ion Super CPAP battery packs include a 12V cord that's compatible with most REMstar machines, along with seven adapters for that 12V cord. This Resprionics lead-acid battery featured on this page does not include any 12V cords or adapters.**

Related Products...

S8 Series 12V Converter
Our Price: \$79.99

Add



12V Cord
Our Price: \$27.00

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IntelliPAP 12V Cord
Our Price: \$20.00

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ResMed 24V Converter
Our Price: \$89.00

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Battery Adapter Cable and 12V Cord
Our Price: \$43.00

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PowerVerter Inverter - 150 W
Our Price: \$45.00

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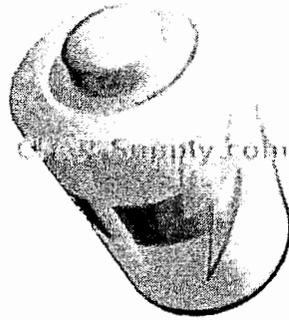
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9/24/07 - Mirage
Quattro Design...

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Powered CPAP...

7/22/07 -
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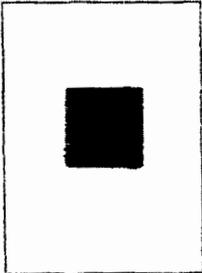
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