



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

FEB 12 2007

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

Mr. Wade Winters
President
Regulatory Resources
240 Joshua Road
Kennewick, WA 99338

Ref. No. 06-0157

Dear Mr. Winters:

This is in response to your July 15, 2006 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-180) applicable to the classification of explosives.

In your letter, you state that the Department of Transportation (DOT) authorizes the Department of Defense (DOD) or the Department of Energy (DOE) the authority to class and approve a new explosive. You state that waste material generated from DOD or DOE development, research or processing of explosives may contain explosive materials in various concentrations. You ask whether DOD or DOE has the authority to remove the "Class 1 explosive" designation from waste material that has been contaminated with explosive materials, but does not meet the criteria to be classed as an explosive when subjected to explosive classification testing by DOD or DOE.

For clarification, the Department of Transportation is the sole approval authority for the transportation of explosives or explosive waste in commerce. DOD and DOE are authorized to class explosives for their internal uses.

Under your scenario, waste material that has been contaminated with explosive materials will not have a pre-existing "Class 1 explosive" designation because it is a "new explosive." As defined in § 173.56, a "new explosive" is an explosive produced by a person who has not previously produced that explosive or has previously produced that explosive but has made a change in the formulation, design or process so as to alter the properties of the explosive.



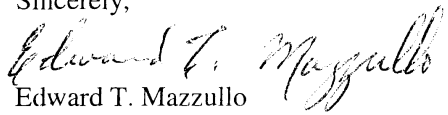
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173.56

Your material meets this definition, and, therefore, is subject to the classification and approval procedures for a new explosive as required under § 173.56 of the HMF.

I trust this satisfies your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Edward T. Mazzullo". The signature is written in black ink and is positioned above the printed name.

Edward T. Mazzullo

Director

Office of Hazardous Materials Standards



240 Joshua Road
 Kennewick, WA 99338
 voice: 509-628-1020
 fax: 509-628-0972
 wace@regulatoryresources.net
 www.regulatoryresources.net

Foster
\$173.56
Explosive
06-0157

July 15, 2006

Mr. Edward T. Mazzullo
 Director, Office of Hazardous Materials Standards
 U.S. DOT/PHMSA (PHH-10)
 400 7th Street S.W.
 Washington, D.C. 20590-0001

Dear Mr. Mazzullo,

Regulatory Resources, Inc. (RRI) is a consulting and training company serving clients subject to the national and International Dangerous Goods and Hazardous Materials Regulations (HMR), and the Environmental Protection Agency (EPA) solid and hazardous waste management regulations. We have had recent questions come up concerning the allowances for the classification of explosives and are seeking DOT's response to one of these questions.

The classing of a new explosive intended for transport in commerce must be performed as required in §173.56. In paragraph (b) and (c) of this section, the Department of Transportation (DOT) authorizes the Department of Defense (DOD) and Department of Energy (DOE) the authority to class and approve a new explosive. The data that supports the classification of an explosive by these agencies, as determined by DOE Explosives Hazard Classification Procedures (§171.7), must be submitted to the DOT for approval in writing before offering for transport in commerce.

Wastes generated from DOD or DOE development, research or processing of explosives, including DOT approved explosives, may contain explosive materials in varied concentrations and forms. The DOD and DOE carry out explosive classification testing on waste matrices. If the results of the required tests confirm that the explosive contaminated waste does not meet the defining criteria to be an explosive, does the authority granted by the DOT to the DOD and DOE for classification of a new explosive authorize these federal agencies to remove the material's Class 1 explosive designation without further DOT approval?

Thank you again for your attention in this matter. We eagerly await your timely reply. Please call me if I can answer any questions.

Thank you.

For Regulatory Resources, Inc.,

Wade A. Winters, CET, CHMM
 President

WAW/lom