



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

APR 7 2006

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

Mr. Harold Zimmerman
Designer
Neupauer Industries Inc.
196A Wabash Road
Ephrata, PA 17522

Ref. No. 06-0065

Dear Mr. Zimmerman:

This is in response to your March 8, 2006 letter and telephone conversation with a member of my staff requesting clarification regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your scenario, you have a portable asphalt machine that uses a burner to heat asphalt to 300 °F to 350 °F, which is below the asphalt's flash point. The tank containing the molten asphalt has a capacity of 100 gallons, and the fuel oil for the burner is a combustible liquid that is carried in a separate 25 gallon tank. You ask if the requirements of the HMR would apply to the transport of this machine along with the fuel oil.

Based on the information provided, the answer is no. An "elevated temperature material," as defined in § 171.8, is a material in a bulk packaging which (1) is in a liquid phase and at a temperature at or above 100 °C (212 °F); (2) is in a liquid phase with a flash point at or above 37.8 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point; or (3) is in a solid phase and at a temperature at or above 240 °C (464 °F). Since your heated material is in a non-bulk container, it is not considered an elevated temperature material and, therefore, is not subject to the HMR if it does not meet the definition for any other hazard class or division. In addition, the fuel oil is a combustible liquid in a non-bulk packaging and, therefore, is not subject to the HMR (see § 173.150(f)).

I hope this information is helpful.

Sincerely,

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



060065

172.101

Neupauer Industries Inc.

Saeterthwaite
§ 172.101
Applicability/Asphalt
06-0065

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March 8, 2006

U. S. DOT – PHMSA (PHH -10)
Attn: Edward T. Mazzullo, Director of Hazard Material Standard
400 7th Street SW
Washington, DC 20590-0001

Dear Mr. Mazzullo,

I had a very informative conversation with Cameron Saeterthwaite this morning. I understand that I am not required to meet Hazmat regulations for my Pothole Patcher machine. My machine is a portable asphalt machine used to patch potholes and complete small paving job. The asphalt is made in the machine by mixing stone and sand together. We use AC 20 blocks for the asphalt.

I would like to list what I discussed with Mr. Saeterthwaite as confirmation of the information I received:

- 1) The tank on the machine is heated to around 300° - 350° to make the asphalt. I was informed that I must let the tank cool to the temperature of less than 212° before I drive it again. (I am only using this vehicle for demonstration purposes.)
- 2) We will be transporting burner fuel in a 20 to 25 gallon tank for use in the heater system.
- 3) The machine has one non pressure 100 gallon tank for the AC block to be put inside. There is a marker on the tank to be assured it does not go over the required amount. (Less than the 119 gallon regulation)
- 4) The asphalt mix is heated just below the flash point. There is no danger of explosion.

I was informed that I could request a letter stating we are exempt from the Hazmat regulation in case of a truck inspection or other inquiries. We presently have a demonstration set with the Pennsylvania Department of Transportation on March 24, 2006. Will we have our letter by that date? I will await your response either through a fax (717) 721-2492, an e-mail neupauerind@dejazzd.com, or through the mail.

Thank you for your assistance in this matter. If you have any question please contact Therese at (717) 721-2492 from 8 a.m. to 2 p.m.

Sincerely,


Harold Zingerman
Designer