



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

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

AUG 9 2006

Mr. Brooks M. Smith
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219-4074

Ref. No. 06-0152

Dear Mr. Smith:

This is in response to your July 6, 2006 letter requesting clarification regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to transportation of Consumer commodity, ORM-D materials. Your scenario is based on the shipment of consumer commodities of various hazard classes that are transported from retail outlets to a central distribution center for reclamation, recycling or other appropriate use. Your questions are paraphrased and answered below.

Q1. May ORM-D materials that are damaged, defective, or leaking be shipped by placing them in zip-loc bags with absorbent material and then unitizing them in rigid plastic totes with interlocking lids, pursuant to § 173.156(b)(1)(i)?

A1. The answer is no. Packagings unable to meet the general packaging requirements in Part 173, Subpart B are ineligible for transportation.

Q2. If the answer to Q1 is no, may the aforementioned ORM-D materials in Q1 be placed in salvage drums in accordance with § 173.3(c)?

A2. The answer is yes.

I hope this information is helpful.

Sincerely,

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



060152

173.3(c)
173.156(b)(1)(i)



Satterthwaite
§173.3 (c)
§173.156 (b)(1)(i)
Exceptions
06-0152

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July 6, 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

Request for Hazardous Materials Regulation Interpretation

Dear Mr. Mazzullo:

I respectfully request assistance from your office in interpreting the Hazardous Materials Regulations as they may apply to the following factual scenario.

My client's business involves the distribution and retail sale of various consumer commodities (as defined in 49 CFR § 171.8), including Class 3, 8, 9 and Division 2.1, 2.2 and 6.1 hazardous materials. Each of these consumer commodities may be re-classed as ORM-D.

My client desires to implement a program where ORM-D materials that are not compliant with their specifications for retail sale (including those that are damaged, defective or leaking) are shipped by private motor carrier from their retail outlets to a central distribution center for reclamation, recycling or other appropriate use.

Question 1: May my client ship ORM-D materials that are damaged, defective or leaking by placing them in zip-loc bags with absorbent material and then unitizing them in rigid plastic totes with interlocking lids, pursuant to 49 CFR § 173.156(b)(1)(i)?

Question 2: If the answer to question 1 is no, then may my client ship ORM-D materials that are damaged, defective or leaking by placing them in salvage drums, pursuant to 49 CFR § 173.3(c)?

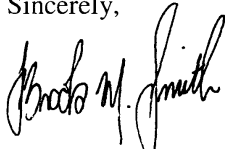
Question 3: If the answer to question 2 is no, then how may my client ship ORM-D materials that are damaged, defective or leaking without first repackaging them (which would be infeasible in a retail outlet environment)?

HUNTON
WILLIAMS

Mr. Edward T. Mazzullo
July 6, 2006
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If you need any additional information to respond to this request for interpretation, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brooks M. Smith". The signature is written in a cursive style with a large, prominent initial "B".

Brooks M. Smith