



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

OCT 25 2006

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

Mr. George A. Kerchner
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

Ref. No.: 06-0230

Dear Mr. Kerchner:

This is in response to your October 2, 2006 letter concerning the transportation of "Battery fluid, acid, 8, UN 2796, PG II" with dry (new, empty) batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your letter you describe the following scenario:

- A dry battery (i.e., a lead acid battery that has not yet been filled with acid) is packaged in a fiberboard box that is marked and labeled for a corrosive material.
- A bottle containing battery fluid, acid (UN2796) renamed "Consumer commodity" and reclassified "ORM-D" in accordance with § 173.154(b) and (c) and is packaged in a 4G fiberboard box that is properly marked in accordance with §§ 172.312 and 172.316.
- These two packages are overpacked in a larger fiberboard box that is marked with orientation arrows and "Consumer commodity, ORM-D."

Specifically, you ask if the package containing the dry battery, which is a non-hazardous material, may remain marked and labeled as a corrosive material if it is overpacked in a way that the corrosive markings and labels are not visible during transportation.

The answer is yes, provided the packaging containing the dry battery is transported in such a manner that the markings and label are not visible during transportation (e.g., overpacked in a larger fiberboard box), and is loaded by the shipper and unloaded by the shipper or consignee (see §§ 172.303(b) and 172.401(d)).

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

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



060230

173.154(e)
173.303(b)
172.401(d)



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October 4, 2006

Mr. Edward Mazzullo
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Re: Request for Interpretation

Dear Mr. Mazzullo:

I am writing to request an interpretation on the requirements for shipping certain lead acid battery products classified as Consumer Commodities.

The U.S. DOT agreed in 2004 that certain lead acid battery products may be shipped as a Consumer Commodities. (See DOT letter Ref. No. 04.0150.) These products consist of battery electrolyte in a plastic container of less than 1 liter that are packed with a dry lead acid battery. These products are commonly referred to as "fresh packs" and are used in motorcycles, ATVs, snow mobiles, etc. For years the battery industry shipped these as Class 8 Corrosive hazardous materials but more manufacturers and distributors are now reclassifying and offering these as Consumer Commodities.

During the transition from Class 8 Corrosive to Consumer Commodity a significant amount of changes to the fresh pack packaging is required. As a result, the question I have pertains to the following packaging scheme:

1. A fresh pack retail box (containing a 1 liter plastic container of battery electrolyte and a dry lead acid battery) is marked, labeled, and packed as a Class 8 Corrosive hazardous material.
2. In order to take advantage of the Consumer Commodity reclassification, a distributor would like to repackage the fresh pack as follows:
 - a. Remove the 1 liter of battery electrolyte from the retail box and place it in a 4G fiberboard box that will be marked with the Consumer Commodity/ORM-D markings and orientation arrows;
 - b. Leave the dry lead acid battery in the retail box that will remain marked and labeled as a Class 8 Corrosive hazardous material;
 - c. The battery electrolyte (marked as Consumer Commodity) and dry lead battery (marked and labeled as Class 8 Corrosive) will then be placed in an overpack that is marked Consumer Commodity/ORM-D.

Wiley Rein & Fielding LLP

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It is very important to recognize that dry lead acid batteries shipped without battery electrolyte are not regulated as Class 8 Corrosive hazardous materials.

My question pertains to the packaging, marking, and labeling scenario as described in paragraph 1.c. above. Can a dry lead acid battery that is marked and labeled as a Class 8 Corrosive hazardous material and a liter of Battery fluid, acid that is marked and packed as a Consumer Commodity be placed separately in an overpack and then offered for transportation as a Consumer Commodity (with only the appropriate Consumer Commodity/ORM-D and orientation arrow markings on the overpack)?

Thank you for your assistance.

Sincerely,

George A. Kerchner

George A. Kerchner