



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

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

OCT 30 2003

Mr. Leighton Ford
7011 East Avenue, MS9221
Livermore, CA 94550

Ref. No. 03-0262

Dear Mr. Ford:

This is in response to your letter dated October 17, 2003 regarding the asbestos requirements found in the Hazardous Materials Regulations (HMR: 49 CFR Parts 171-180). Specifically, you ask if § 173.216(b) and Special Provision 156 preclude a shipper from offering "non-friable" asbestos under the description "Asbestos, 9, NA2212, III."

The answer is no. Even though asbestos, when it is immersed or fixed in a natural or artificial binder material, such as cement, plastic, asphalt, resins or mineral ore, or contained in manufactured products (i.e., non-friable asbestos), is excepted from the HMR by Special Provision 156 and § 173.216(b) a shipper may still classify it as a Class 9 material. In doing so the shipper could use the description "Asbestos, 9, NA2212, III" to ship the material domestically.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "Susan Gorsky".

Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

Supko
§ 173.216
Asbestos
03-0262

Dear Mr. Mazzullo,

I recently spoke with Ben Supko of your staff and he suggested that I write a letter to your office requesting an official interpretation of 173.216 (a) and 173.216(b).

Section 173.216 (a) lists the various types of asbestos subjected to HMR but it does not specifically address whether or not the "Asbestos, 9, NA2212, III" proper shipping name is only to be used for "friable" forms of asbestos. I do understand that 173.216(b) does allow asbestos immersed in cement or manufactured articles, etc., to be excepted from the subchapter (not subject to HMR). In addition, Mr. Supko also mentioned that Special Provision 156, as mentioned in HM215-E, July 31, 2003, specifically allows asbestos immersed in a binder to be excepted from the HMR. If I elect not to use 173.216 (b) and I do have non-friable asbestos, and I choose to use a uniform hazardous waste manifest, am I disallowed from using the "Asbestos, 9, NA2212, III" proper shipping name in lieu of "Non-Hazardous" or "Non-RCRA Hazardous Waste Solid"? Said in a different way, would I be violating any section in the HMR by shipping my non-friable asbestos waste under the "Asbestos, 9, NA2212, III" proper shipping name? Does the use of the "Asbestos, 9, NA2212, III" proper shipping name and the fact that it is a hazard class 9 insinuate that the asbestos being shipped is or has to be "friable"? My position is that the use of the "Asbestos, 9, NA2212, III" proper shipping name does not specifically indicate, nor does it have anything to do with whether or not the asbestos being shipped is friable or non-friable. Asbestos is Class 9 material because it is a listed hazardous substance and the only mention of a "friable" form occurs when one needs to RQ for Asbestos. It is my understanding that the double cent sign found in the RQ table ONLY applies to the friable form. Nowhere in the hazardous substance table does it separate asbestos into friable or non-friable form other than when you would have to RQ for the "friable" asbestos.

A disposal facility here in California is saying that because I am using the "Asbestos, 9, NA2212, III" proper shipping name, it is a hazard class 9 material and therefore by default, the asbestos has to be friable. Non-friable asbestos cannot be shipped under this shipping name and is a manifest discrepancy per DOT (incorrect shipping name). The disposal facility is also saying that the double cent sign not only applies to the RQ determination for "friable" forms of asbestos but because it does so, this also means that the proper shipping name is ONLY for "friable" forms. Again, I am saying that the HMR does not explicitly say that "Asbestos, 9, NA2212, III" can only be used for "friable" forms of asbestos. I would like to point out again that I understand that asbestos is not regulated if you meet the condition of 173.216(b) but is it incorrect to not choose this option? Is there any reason why you could not use "Asbestos, 9, NA2212, III" to describe non-friable asbestos while being transported to the disposal facility?

It was at this point that Ben and I agreed that we should seek an official interpretation.

For your information, in California, transite forms of asbestos are not considered hazardous waste in California (non-friable). A friable form of Asbestos-containing material exhibits the characteristic for toxicity and is a non-RCRA hazardous waste if it contains greater than or equal to 1.0 percent asbestos. The California waste code for non-RCRA hazardous asbestos-containing material is 151. Non-Friable asbestos-containing waste is sent to a landfill without a state code and is considered nonhazardous from a land disposal point of view. Nonhazardous asbestos-containing material is subject to regulation by the California regional air quality management district (AQMD).

However, the issue again is the transporting of non-friable asbestos-containing material on a manifest and how the landfill is using the proper shipping name to indicate the type of waste being shipped to its facility. In this particular case, the use of the "Asbestos, 9, NA2212, III" proper shipping name to the disposal facility is indicating that the material is "friable" and is contradicting the absent of a state code which would mean in California that the asbestos-containing waste is not a state-regulated waste and is considered nonhazardous.

Your prompt attention to this matter is greatly appreciated. If you have any questions please do not hesitate to contact me @ (925) 294-4506.

Regards,

Leighton Ford
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