



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

NOV 19 2007

Mr. David H. Baker
Attorney for Zippo Manufacturing
Law Offices of David H. Baker LLC
1700 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Ref. No. 07-0191

Dear Mr. Baker:

This responds to your letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to your client, Zippo Manufacturing Company ("Zippo"). Specifically, you ask for confirmation from this office that the "purging" method Zippo is suggesting to its customers for its liquid-fueled, non-pressurized lighters conforms to the requirements in § 172.102, Special Provision 168 of the HMR. You submitted test report results with your request showing that if the lighter is disassembled and the fuel allowed to evaporate for at least 24 hours, the lighter will no longer ignite and only trace (negligible) amounts of fuel remain.

Section 172.102, Special Provision 168, states a lighter that is cleaned and purged of vapors is not subject to the HMR. While this office generally does not endorse a specific method to accomplish this provision, we agree that your suggested test method appears to satisfy this provision. Thus, lighters conforming to this method would not be subject to the HMR.

I trust this satisfies your request. Please contact us if we can be of further assistance.

Sincerely,

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

LAW OFFICES OF DAVID H. BAKER LLC

1700 PENNSYLVANIA AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20006

dhbakerlaw@aol.com

202 253 4347 cell

202 349 4190 office

202 330 5092 fax

Stevens
§ 173.308
Lighters
07-0191

June 21, 2007

Mr. Edward T. Mazzullo
Director
Office of Hazardous Materials Standards
Pipeline & Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
East Building
Washington, D.C. 20003

Re: Request for Clarification on Shipments of Empty Lighters

Dear Mr. Mazzullo:

I am writing to you on behalf of Zippo Manufacturing Company of Bradford, Pennsylvania ("Zippo"). Zippo is the last remaining U.S. manufacturer of refillable lighters and employs 800 people in Northwestern Pennsylvania.

I am writing to seek a clarification that Zippo liquid fuel lighters that have been opened up, taken apart and the fuel allowed to evaporate for 24 hours, are empty lighters per Rule 168, paragraph two, applicable to non-pressurized lighters. See 49 CFR Part 172.102(c)(1).

An unused lighter or a lighter that is cleaned of residue and purged of vapors is not subject to the requirements of this subchapter.

The issue arises because consumers sometimes return used Zippo liquid fuel lighters to Zippo in Bradford for repair. Under Zippo's lifetime warranty policy, which is unique to the lighter industry, they will repair or replace any faulty Zippo lighter. In a normal year, Zippo receives 80,000 to 100,000 lighters for repair in Bradford. This warranty and the liberal return policy help to make the Zippo product distinct from its foreign competitors. From the perspective of Zippo management, which is a family owned company, the warranty policy is critical to the maintenance of the brand image and thus the company and jobs it creates.

Zippo instructs consumers who are returning liquid fuel lighters for repair to take the following steps:

1. At least 24 hours before shipping, pull the insert with the absorbent material containing the fuel, out of the lighter case.
2. Let the insert sit in an open area for any remaining fuel or fuel residue to evaporate.
3. Wrap the lighter in bubble wrap to prevent movement.
4. Place the lighter in a padded envelope and send it in.

For the past forty plus years, Zippo has received over ten million returned lighters without incident. Most of these lighters were placed in the U.S. mail and were shipped by first class mail. Recently, the U.S. Postal Service ("USPS") advised Zippo that it would not accept these lighters for first class mail, because the returned lighters constituted hazardous materials under PHMSA's Hazardous Materials Regulations. When discussing this point with USPS representatives, they indicated that if they had a ruling or clarification from PHMSA that these opened lighters were cleaned of residue and purged of vapors under Rule 168, they would allow the lighters to continue to ship by first class mail.

Zippo is enclosing its test results demonstrating that within 24 hours after the insert is pulled out of the lighter, there is not sufficient fuel remaining in the lighters for a flame to be created. As noted above, under the procedures given to consumers, the insert is taken out *at least* 24 hours in advance. Zippo is certain that a flame could not be created by the insert after 24 hours. Moreover, any residue would be that of an ORM-D material, lighter refill, not a hazardous material. See 49 CFR Part 173.29(a)(2)(iv)(a), ***Empty Packaging***.

We also believe that these emptied lighters would not be subject to the Hazardous Materials Regulations consistent with this agency's rulings in Clarification Reference Nos. 06-0027 (Steve Kranyec), 02-0033 (Timothy Roberts) and 02-0146 (James Stoddard).

In light of these circumstances, Zippo respectfully requests a letter of clarification that such emptied lighters are not subject to the Hazardous Materials Regulations.

For your convenience, we will also be delivering six samples of these lighters for your review.

Thank you for your assistance in this matter.

Very truly yours,

David H. Baker
Attorney for Zippo Manufacturing

DHB:bd
Enclosures (1 test report and 6 samples)