



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

AUG 11 2016

Mr. David M. Comen
President
Artisan EHS Consulting, LLC
104 Knoxwood Court
Anderson, SC 29621

Reference No. 15-0227

Dear Mr. Comen:

This is in response to your November 18, 2015 e-mail and subsequent conversations with members of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the selection of a proper shipping name for a hazardous waste. You present a general scenario where clarified slurry oil tank sediment of in-line filter/separation solids that do not meet the defining criteria for hazard classes 1-8 are shipped domestically in bulk containers with the following basic description "RQ, NA3077, Hazardous waste, solid, n.o.s. (K170), 9, PGIII" or "RQ, NA3082, Hazardous waste, liquid, n.o.s. (K170), 9, PGIII". Your questions are paraphrased and answered as follows:

Q1. As a hazardous waste, the K170 hazardous waste is a DOT hazardous material?

A1. Per the definition of a hazardous substance from § 171.8, if the quantity of material meeting the K170 waste code equals or exceeds the reportable quantity shown in Appendix A to §172.101 in one package, the waste would be considered a DOT hazardous substance. A hazardous substance is a hazardous material per the definition of a hazardous material in §171.8.

Q2. Since the quantity of waste meeting waste code K170 is greater than the reportable quantity shown in Appendix A to §172.101 the waste as packaged is a DOT hazardous substance?

A2. Yes. See A1.

Q3. In accordance with § 172.203(k)(2)(i) the use of the EPA waste code K170 with the DOT proper shipping name or basic description is sufficient as the technical name for a hazardous material such as "RQ, NA3077, Hazardous waste, solid, n.o.s. (K170), 9, PGIII".

A3. This basic description is appropriate for the scenario described. It is important to note however that § 172.203(k)(2)(i) excepts "Hazardous waste, liquid or solid n.o.s." materials classed as Class 9 from the requirement to provide a technical name provided the EPA hazardous waste number is included on the shipping paper in association with the basic

description or provided the material is described in accordance with the provisions of § 172.203(c).

Q4. In accordance with §172.203(c), the use of the EPA waste code K170 with the DOT proper shipping name or basic description is sufficient as the technical name for a hazardous material such as “RQ, NA3077, Hazardous waste, solid, n.o.s. (K170), 9, PGIII”.

A4. Yes. Section 172.203(c) allows the waste code to be used to identify the hazardous substance.

Q5. In accordance with § 172.202 special provision 8, “NA3077, Other regulated substances, solid, n.o.s.” and “NA3082, Other regulated substances, liquid, n.o.s.” cannot be used as proper shipping names for K170 hazardous waste (or any other RCRA hazardous waste)?

A5. Yes. Special provision 8 states that NA3077, “Other regulated substances, solid, n.o.s.” and “NA3082, Other regulated substances, liquid, n.o.s.” cannot be used as proper shipping names for hazardous substances that also meet the definition of a hazardous waste.

Q6. Should special provision 8 be included in column 7 of the § 172.101 Hazardous Materials Table (HMT) for NA3077, “Other regulated substances, solid, n.o.s.” and “NA3082, Other regulated substances, liquid, n.o.s.”?

A6. Special provision 8 is assigned to the “UN3077, Environmentally hazardous substance, solid, n.o.s.”, or “UN3082, Environmentally hazardous substance, liquid, n.o.s.” entries to allow domestic shippers to choose the alternative shipping descriptions “Other regulated substances, solid, n.o.s.” and “Other regulated substances, liquid, n.o.s.” if they meet the conditions specified. This office believes the current assignment of special provision 8 to these two entries is sufficient to indicate when the additional domestic “Other regulated substances” entries may be utilized.

Questions 7 through 10 concern the use of UN3077, Environmentally hazardous substance, solid, n.o.s.”, or “UN3082, Environmentally hazardous substance, liquid, n.o.s.” entries.

Q7. Special provision 146 includes the phrase “...does not meet the definition for a hazardous waste or a hazardous substance...”. If the K170 hazardous waste is a hazardous waste and a hazardous substance can “UN3077, Environmentally hazardous substance, solid, n.o.s.”, or “UN3082, Environmentally hazardous substance, liquid, n.o.s.”, be used to describe K170 hazardous waste solid or liquid?

A7. Yes. Special provision 146 permits the use of the environmentally hazardous substance proper shipping names for a material that poses a hazard to the environment but does not meet: (1) the definition for a hazardous waste or a hazardous substance (See § 171.8) of this subchapter, or (2) any hazard class, (See part 173) if the material is designated as environmentally hazardous by another Competent Authority. This provision may be used for both domestic and international shipments.

As what constitutes an environmentally hazardous substance may vary in different countries, the intention of SP 146 is to address materials which do not meet the HMR definitions of hazardous waste, hazardous substance or a hazard class but have been deemed environmentally hazardous by a Competent Authority other than the United States. Specifically, SP 146 permits these materials to use the environmentally hazardous substance proper shipping names both domestically and internationally.

Q8. Does the word "waste" have to be included as part of these DOT proper shipping names? If so, should it precede the proper shipping name in the basic description, such as "RQ, UN3082, Waste environmentally hazardous substance, liquid, n.o.s. (K170), 9, PGIII"? Can the word "waste" be used anywhere else in the basic description?

A8. Section 172.101(c)(9) of the HMR requires shippers to place the word "waste" in front of the proper shipping name if the material is a waste as defined in § 171.8, and the description of the material does not already include the word "waste." The HMR do not permit the use of the word "waste" preceding a proper shipping name if the material does not meet the definition in §171.8 for a hazardous waste. The requirement in § 172.101(c)(9) is that the word waste precede the proper shipping name of the material. No other location for the word waste is authorized.

Q9. Is "K170" sufficient as the technical name for the hazardous material to include with the DOT proper shipping name or basic description, in accordance with 49 CFR §172.203(k), such as "RQ, UN3077, Waste environmentally hazardous substance, solid, n.o.s. (K170), 9, PGIII?"

A9. Yes. See A3.

Q10. Is "K170" sufficient as the technical name for the hazardous substance to include with the DOT proper shipping name or basic description, in accordance with 49 CFR §172.203(c), such as "RQ, UN3077, Waste environmentally hazardous substance, solid, n.o.s. (K170), 9, PGIII?"

A10. Yes. Section 172.203(c) allows the waste code to be used to identify the hazardous substance.

Q11. If "UN3077, Environmentally hazardous substance, solid, n.o.s.", "UN3082, Environmentally hazardous substance, liquid, n.o.s.", "NA3077, Hazardous waste, solid, n.o.s.", or "NA3082, Hazardous waste, liquid, n.o.s." can be used as proper shipping names for K170 hazardous waste (solid or liquid), are the "NA3077, Hazardous waste, solid, n.o.s." or "NA3082, Hazardous waste, liquid, n.o.s." proper shipping names considered more accurate for describing K170 hazardous waste?

A11. For domestic transportation an offeror may use either the UN3077/UN3082 or NA3077/NA3082 HMT entries to ship hazardous waste that does not meet the definition of any other hazard class.

Q12. Would the answer in Q11 change if the hazardous waste was being shipped internationally instead of domestically?

A12. For international transportation the UN3077/UN3082 entries should be utilized.

Q13. With regards to ongoing efforts for harmonization with other dangerous goods transportation regulations, would it be beneficial to consider "UN3077, Environmentally hazardous substance, solid, n.o.s.", or "UN3082, Environmentally hazardous substance, liquid, n.o.s." rather than "NA3077, Hazardous waste, solid, n.o.s." or "NA3082, Hazardous waste, liquid, n.o.s." as proper shipping names for K170 hazardous waste?

A13. As mentioned in A11 above, for domestic transportation it is up to the offeror to determine which proper shipping name to utilize.

You present a second scenario consisting of a mixture of K170 hazardous waste liquid and other chemicals. You present an example where benzene is present at levels that would assign it to waste code D018, but not in sufficient concentration to make the hazardous waste flammable. In this situation, the hazardous waste would have the waste codes D018 and K170, which you state would, for most states, be included on a hazardous waste manifest. According to the scenario you present the hazardous waste is a DOT hazardous material, and for purposes of this example, is also a hazardous substance due to K170 and benzene/D018. It is unclear from the scenario that your material does not meet any of the hazard classification criteria for classes 1-8, but for the purposes of these responses it is assumed to be as such.

Q14. Should "D018" or "benzene" be selected as the technical name with the DOT proper shipping name or basic description, such as "RQ, NA3082, Hazardous waste, liquid, n.o.s., (K170, D018), 9, PGIII" or "RQ, NA3082, Hazardous waste, liquid, n.o.s., (K170, benzene), 9, PGIII"?

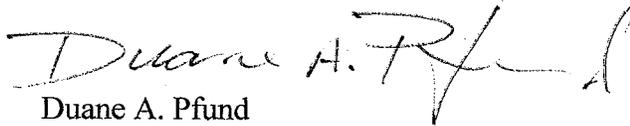
A14. The use of either description you provide is appropriate and authorized by §172.203(c) and (k)(2)(i).

Q15. If benzene, rather than D018, is included as a technical name with the DOT proper shipping name or basic description (and the mixture is not flammable), would this preclude the use of "NA3082, Hazardous waste, liquid, n.o.s.", requiring instead a DOT hazard class 3 proper shipping name such as "UN1144, Waste benzene (K170)" or "UN1993, Waste flammable liquids, n.o.s. (benzene, K170)", (as examples), since benzene is a specifically listed hazardous material in 49 CFR §172.101?

A15. The inclusion of the word "benzene" as a technical name for "NA3082, Hazardous waste, liquid, n.o.s." would not automatically indicate the need for a Class 3 flammable liquid proper shipping name since "benzene" is a proper shipping name listed in § 172.101. Only hazardous materials meeting the definition of a flammable liquid are required to be classified as such and may be described and offered as Class 3 materials.

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

Sincerely,

A handwritten signature in cursive script that reads "Duane A. Pfund". The signature is written in dark ink and is positioned above the printed name.

Duane A. Pfund
International Standards Coordinator
Standards and Rulemaking Division

Goodall, Shante CTR (PHMSA)

Webb
172 203
Shipping Papers
15-0227

From: Geller, Shelby CTR (PHMSA)
Sent: Wednesday, November 18, 2015 12:23 PM
To: Hazmat Interps
Subject: FW: Request for interpretation - proper shipping names
Attachments: 20151118 DOT interp env haz sub.pdf

Dear Shante and Alice,

Attached is a request for a letter of interpretation. Mr. Comen spoke with Jordan in the HMIC. His mailing address is:

David Comen
Artisan EHS Consulting, LLC
104 Knoxwood Court
Anderson, SC 29621

Thanks,
Shelby

From: Dave Comen [mailto:dcomen@artisanehs.com]
Sent: Wednesday, November 18, 2015 10:56 AM
To: INFOCNTR (PHMSA)
Subject: Request for interpretation - proper shipping names

Per the attached letter, Artisan EHS is requesting an interpretation for describing hazardous wastes using the proper shipping names NA3077 Hazardous waste, solid, n.o.s., NA3082 Hazardous waste, liquid, n.o.s., UN3077 Environmentally hazardous substance, solid, n.o.s., and UN3082 Environmentally hazardous substance, liquid, n.o.s.

Thank you.

Dave Comen
Artisan EHS Consulting, LLC
864-934-1243





November 18, 2015

U.S. Department of Transportation
PHSMA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SC
Washington, D.C. 20590-0001

Submitted via e-mail to infocntr@dot.gov

Re: Request for Interpretation - Seeking Clarification for the use of *NA3077, Hazardous waste, solid, n.o.s., NA3082, Hazardous waste, liquid, n.o.s., UN3077 Environmentally hazardous substance, solid, n.o.s., and UN3082, Environmentally hazardous substance, liquid, n.o.s.* as Proper Shipping Names for Hazardous Wastes

Based upon review of the hazardous materials shipping regulations, DOT guidance documents, industry experience, citations for incorrect DOT proper shipping names and basic descriptions, and discussion with subject matter experts, Artisan EHS Consulting, LLC (Artisan) has encountered conflicting and sometimes contradictory instructions and recommendations on the selection of DOT proper shipping names for certain hazardous wastes.

Artisan routinely works with hazardous waste generators and hazardous waste transporters that generate and transport RCRA hazardous wastes that are not assigned a DOT hazard class 1 – 8, are packaged in a quantity exceeding a Reportable Quantity, and are shipped domestically. In summary, the hazardous wastes, shipped both as liquids and solids, are:

- RCRA hazardous waste,
- In a quantity exceeding a Reportable Quantity in a bulk container , and
- Not hazard class 1 – 8.

As a hypothetical example, K170 listed hazardous waste, Clarified slurry oil tank sediment of in-line filter/separation solids, is reportedly shipped in bulk containers with the DOT basic description of *RQ, NA3077, Hazardous waste, solid, n.o.s. (K170), 9, PGIII* or *RQ, NA3082, Hazardous waste, liquid, n.o.s. (K170), 9, PGIII*.

Artisan EHS Consulting, LLC
104 Knoxwood Court, Anderson SC 29621 Phone: 864-934-1243 Fax: 864-469-5430

Artisan would like to confirm that these determinations are correct for the example of K170 hazardous waste:

1. As a hazardous waste, the K170 hazardous waste is a DOT hazardous material.
2. Since greater than a Reportable Quantity of K170 hazardous waste is in the bulk container, the K170 hazardous waste as packaged is a DOT hazardous substance.
3. In accordance with 49 CFR §172.203(k)(2)(i), the use of the EPA waste code K170 with the DOT proper shipping name or basic description is sufficient as the technical name for a hazardous material, such as *RQ, NA3077, Hazardous waste, solid, n.o.s. (K170), 9, PGIII*.
4. In accordance with 49 CFR §172.203(c), the use of the EPA waste code K170 with the DOT proper shipping name or basic description is sufficient as the technical name for a hazardous substance, such as *RQ, NA3077, Hazardous waste, solid, n.o.s. (K170), 9, PGIII*.
5. In accordance with 49 CFR §172.102 Special Provision 8, *NA3077, Other regulated substances, solid, n.o.s.* and *NA3082, Other regulated substances, liquid, n.o.s.* cannot be used as proper shipping names for K170 hazardous waste (or for any RCRA hazardous waste).
 - a. As a question, should '8' be included in the Special Provision column of 49 CFR §172.101 for *NA3077, Other regulated substances, solid, n.o.s.* and *NA3082, Other regulated substances, liquid, n.o.s.*?

There are several examples in DOT interpretations where *UN3077, Environmentally hazardous substance, solid, n.o.s.* or *UN3082, Environmentally hazardous substance, liquid, n.o.s.* are suggested as proper shipping names for hazardous wastes which are not assigned a DOT hazard class 1 – 8. These interpretations include 05-0247R, 06-0039R, 11-0071, and 13-0181. In addition, 49 CFR §172.102 Special Provision 146 states:

This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in §171.8 of this subchapter, or any hazard class, as defined in part 173 of this subchapter, if it is designated as environmentally hazardous by another Competent Authority. This provision may be used for both domestic and international shipments.

If *UN3077, Environmentally hazardous substance, solid, n.o.s.* or *UN3082, Environmentally hazardous substance, liquid, n.o.s.* are used as the proper shipping

name for K170 hazardous waste (solid or liquid), we have several questions concerning this use as proper shipping names for RCRA hazardous waste:

6. Special Provision 146 includes the phrase ‘...does not meet the definition for a hazardous waste or a hazardous substance...’. If the K170 hazardous waste is a hazardous waste and a hazardous substance, can *UN3077, Environmentally hazardous substance, solid, n.o.s.* or *UN3082, Environmentally hazardous substance, liquid, n.o.s.* be used to describe K170 hazardous waste solid or liquid?
7. Does the word ‘waste’ have to be included as part of these DOT proper shipping names? If so, should it precede the proper shipping name in the basic description, such as *RQ, UN3077, Waste environmentally hazardous substance, solid, n.o.s. (K170), 9, PGIII*? Can the word ‘waste’ be used anywhere else in the basic description?
8. Is ‘K170’ sufficient as the technical name for the hazardous material to include with the DOT proper shipping name or basic description, in accordance with 49 CFR §172.203(k) , such as *RQ, UN3077, Waste environmentally hazardous substance, solid, n.o.s. (K170), 9, PGIII*?
9. Is ‘K170’ sufficient as the technical name for the hazardous substance to include with the DOT proper shipping name or basic description, in accordance with 49 CFR §172.203(c) , such as *RQ, UN3077, Waste environmentally hazardous substance, solid, n.o.s. (K170), 9, PGIII*?
10. If *UN3077, Environmentally hazardous substance, solid, n.o.s.*, *UN3082, Environmentally hazardous substance, liquid, n.o.s.*, *NA3077, Hazardous waste, solid, n.o.s.* or *NA3082, Hazardous waste, liquid, n.o.s.* can be used as proper shipping names for K170 hazardous waste (solid or liquid), are the *NA3077, Hazardous waste, solid, n.o.s.* or *NA3082, Hazardous waste, liquid, n.o.s.* proper shipping names considered more accurate for describing K170 hazardous waste?
 - a. What if the K170 hazardous waste was being shipped internationally instead of domestically?
11. With regards to ongoing efforts for harmonization with other dangerous goods transportation regulations, would it be beneficial to consider *UN3077, Environmentally hazardous substance, solid, n.o.s.*, or *UN3082, Environmentally hazardous substance, liquid, n.o.s.* rather than *NA3077, Hazardous waste, solid, n.o.s.* or *NA3082, Hazardous waste, liquid, n.o.s.* as proper shipping names for K170 hazardous waste?

There are additional circumstances that could occur with a hypothetical mixture of K170 hazardous waste liquid and other chemicals. For example, benzene could be present at levels above RCRA characteristic hazardous waste criteria (D018), but not in sufficient concentration to make the hazardous waste flammable. In this situation, the hazardous waste would have the waste codes D018 and K170, which would, for most states, be included on a hazardous waste manifest. The hazardous waste is a DOT hazardous material, and for purposes of this example, is also a hazardous substance due to K170 and benzene/D018.

12. Should 'D018' or 'benzene' be selected as the technical name with the DOT proper shipping name or basic description, such as *RQ, NA3082, Hazardous waste, liquid, n.o.s., (K170, D018), 9, PGIII* or *RQ, NA3082, Hazardous waste, liquid, n.o.s., (K170, benzene), 9, PGIII*?
13. If benzene, rather than D018, is included as a technical name with the DOT proper shipping name or basic description (and the mixture is not flammable), would this preclude the use of *NA3082, Hazardous waste, liquid, n.o.s.* (such as *RQ, NA3082, Hazardous waste, liquid, n.o.s. (K170, benzene), 9, PGIII*), requiring instead a DOT hazard class 3 proper shipping name such as *UN1144, Waste benzene (K170)* or *UN1993, Waste flammable liquids, n.o.s. (benzene, K170)*, (as examples), since benzene is a specifically listed hazardous material in 49 CFR §172.101?

Thank you for your assistance. I can be reached at 864-934-1243 or dcomen@artisanehs.com for questions or clarifications.

Sincerely,



David M. Comen, CIH, CHMM
President