



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**
JUN 10 2009

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Mr. Earnie Cook
Director of Technical Services
Moeller Marine Products, Inc.
North Spring Street
Sparta, TN 38583

Ref. No. 09-0097

Dear Mr. Cook:

This responds to your April 28, 2009 email requesting clarification of the applicability of certain requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You provide results of your product packaging tested in accordance with the non-bulk performance-oriented packaging testing requirements in Part 178, Subpart M. Your questions are paraphrased and answered as follows:

Q1. Is a special permit required for a packaging that has successfully passed the tests prescribed in Part 178, Subpart M of the HMR?

A1. No. A special permit is not required for a packaging successfully tested in accordance with Part 178, Subpart M and capable of conforming to the general packaging requirements of § 173.24 while in transportation.

Q2. Does PHMSA issue a certificate indicating successful testing in accordance with Part 178, Subpart M of the HMR?

A2. No. In accordance with § 178.503, it is the manufacturer's responsibility to properly mark every packaging that is represented as being manufactured to meet a UN standard. This marking is the manufacturer's certification that the packaging conforms to the applicable UN standard. We note that for the 29-gallon container, the packaging identification code in the marking presented in the test results should not include a "W" unless required by an approval under § 178.601(h). Additionally, for both the 14- and 29-gallon containers, the marking must include the year of manufacture as required by § 178.503.

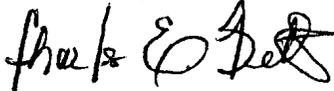
Q3. Are our employees required to be trained?

A3. Yes. Those employees considered hazmat employees as defined in § 171.8 must be trained in accordance with Part 172, Subpart H of the HMR. Hazmat employees include individuals who design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

Q4. If a special permit is not required and PHMSA does not issue a certificate, can we begin manufacturing once training of our hazmat employees is complete?

A4. PHMSA does not place restrictions on when you may or may not manufacture packaging. However, no person may, by marking or otherwise, represent that a container or package for transportation of a hazardous material is safe, certified, or in compliance with the HMR unless it meets all applicable regulations (§ 171.2(j)). Additionally, each hazmat employee who performs a function subject to the HMR (such as those described in A3) may not perform that function unless instructed in the requirements of the HMR that apply to that function. A hazmat employee may perform a job function prior to completion of training provided the employee performs the function under the direct supervision of a properly trained and knowledgeable hazmat employee and the training is completed within 90 days after employment or a change in job function. See § 172.702(b).

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is written in a cursive style with some loops and flourishes.

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards

Der Kinderen

§178.600-609 Subpart M

Testing

09-0097

Drakeford, Carolyn <PHMSA>

From: Betts, Charles <PHMSA>
Sent: Tuesday, April 28, 2009 12:37 PM
To: Drakeford, Carolyn <PHMSA>
Cc: Mazzullo, Ed <PHMSA>; Gorsky, Susan <PHMSA>
Subject: FW: Product Review Group II Container tested under 49 CFR 178 Subpart M
Importance: High
Attachments: MM220_Gas Walker Sell Sheet.pdf; 18390-1 GW14 Test Report.pdf; 18381-1 29GW Test Report.pdf

Carolyn please log in for assignment this request for interpretation.

Thanks,
Charles

From: ECook@moellermarine.com [mailto:ECook@moellermarine.com]
Sent: Tuesday, April 28, 2009 12:07 PM
To: INFOCNTR <PHMSA>
Cc: Betts, Charles <PHMSA>; Mazzullo, Ed <PHMSA>
Subject: Product Review Group II Container tested under 49 CFR 178 Subpart M

Good Day Mr. Ed Mazzullo and Mr. Charles Betts,

I have a few questions related to a new product my organization is preparing to produce. I hope this e-mail is directed to the correct parties within US DOT.

We recently purchased a company named Tempo Products, which produced a 14 gallon & 29 gallon portable gas dock, A.K.A - "Gas Walkers" It was our understanding these products complied with the 49 CFR 178 Subpart M. In order to cover our internal liability on new product introduction we manufactured a limited production run of 14 gallon & 29 gallon Gas Walkers, for 3rd party testing. Those test reports are attached to this e-mail for US DOT review.

The questions are:

- Since our 14 & 29 gallon Gas Walkers passed the 49 CFR 178 Subpart M, is a Special Permit Required?
- Does USDOT issue a certificate indicating our product meets the 49 CFR 178 Subpart M?
- We will be required to train our employees to the " Hazmat Employee" requirements within 49 CFR?
- If a Special Permit is not required and USDOT does not issue a certificates, if training is required -once completed Moeller can begin manufacturing ?

See the attached product sell sheet and test reports performed.

(See attached file: MM220_Gas Walker Sell Sheet.pdf)(See attached file: 18390-1 GW14 Test Report.pdf)(See attached file: 18381-1 29GW Test Report.pdf)

4/28/2009

Please advise as soon as possible. Thank you for your time..

Earnie Cook
Director of Technical Services
Moeller Marine Products
Sparta , TN Facility
Phone. 1.800.432.8344 ext. 248
Cell 1.931.434.5161

e-mail. ecook@moellermarine.com

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