



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

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

JUL 22 2009

Mr. Lawrence S. Thompson
Waste Manager
Parsons Corporation
Newport Chemical Depot NECDF
Highway 63 South, P.O. Box 519
Newport, IN 47966

Ref. No. 09-0124

Dear Mr. Thompson:

This responds to your April 6, 2009 letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to materials designated as “hazardous wastes” by the State of Indiana. Specifically, you ask whether chemical munitions, including VX (O-ethyl-S (2-diisopropylaminoethyl) methyl phosphonothiolate), designated as hazardous wastes under state law are considered hazardous wastes for purposes of the HMR.

According to your letter, the 2003 State of Indiana Hazardous Waste Annual Update amended 329 IAC 3.1-6-3 to clarify that chemical munitions are acute hazardous wastes. You state that this amendment provided that the chemical munitions listed in this section must be managed in accordance with requirements for acute hazardous wastes in the hazardous waste program. You ask if you are correct in your understanding that it is appropriate to manage these chemical munitions under the HMR as a hazardous waste.

The answer is no. As defined in the HMR, a “hazardous waste” is any material that is subject to the hazardous waste manifest requirements of the U.S. Environmental Protection Agency (EPA) specified in 40 CFR Part 262. Materials that are not subject to the EPA manifest requirements are not hazardous wastes under the HMR. Note that nothing in the HMR prohibits a state from “managing” these materials as state-designated hazardous wastes so long as the state does not require the material to be identified as a “hazardous waste” on the manifest. Note as well that if the chemical munitions described in your letter meet any of the DOT hazard class definitions in Part 173, they are subject to all applicable HMR requirements for that hazard class.

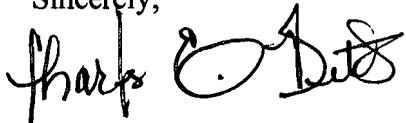
Shipping descriptions from the HMR may not be used to describe a non-EPA waste material on a state manifest document. Thus, the word “waste” may not precede the basic description for a DOT regulated hazardous material when the material is not an EPA hazardous waste. Use of the word “waste” preceding the basic description indicates that the material is a federally regulated hazardous waste. However, a shipping name from the HMR may be used

following the word “waste” so long as the hazard class number, UN or NA identification number, and packing group number are not included in the description of the waste material.

Nothing in the HMR prohibits a state from imposing requirements on EPA-designated waste materials that are in addition to those required by EPA regulations so long as these additional requirements do not interfere with the actual movement of the waste. Thus, states may require certain additional information on the manifest form. However, this additional information may not be made mandatory during transportation of the material, and states may not apply enforcement sanctions on the transporter during transportation for any failure of the manifest to show optional state information entries.

I hope this answers your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is written in a cursive style with a large initial "C" and "B".

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

PARSONS

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April 6, 2009

COG: 12742

Mr. Edward T. Mazzullo
Director, Office Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, S.E.
East Building, Second Floor
Washington, D.C. 20590-0001

Boothe
§ 171.3
Hazardous Waste
09-0124

Re: Letter of Interpretation Request for State of Indiana Regulated Hazardous Waste

Dear Mr. Mazzullo:

49 CFR 171.8 defines a hazardous waste as any material subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.

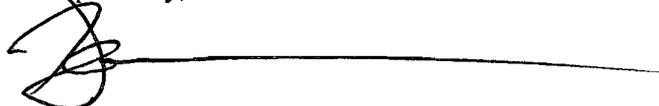
Sections 3006 and 3009 of Resource Conservation and Recovery Act, as amended (RCRA) (42 U.S.C. 6926 and 42 U.S.C. 6929, respectively) allow a state to administer and enforce a state hazardous waste program. The US EPA has authorized the State of Indiana to administer the state RCRA program in lieu of the federal RCRA program.

The 2003 State of Indiana Hazardous Waste Annual Update amended 329 IAC 3.1-6-3 to clarify that chemical munitions including VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate) are acute hazardous wastes. This amendment provided that chemical munitions listed in this section must be managed in accordance with the requirements for acute hazardous wastes in the hazardous waste program.

As the State of Indiana is authorized by the USEPA to administer the state RCRA program in lieu of the federal RCRA program; and, as the State of Indiana requires chemical munitions including VX to be managed as acute hazardous wastes subject to all RCRA requirements, do you concur that it is appropriate to continue management of these materials under the HMR as a hazardous waste?

I am requesting a written response to this question to keep on file should this determination ever be in question. Thank you for time and assistance in this matter.

Respectfully,



Lawrence S. Thompson
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