



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

AUG 18 2010

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

Mr. S.C. Watkins
Currie Associates, Inc.
10 Hunter Brook Lane
Queensbury, NY 12804

Ref. No. 10-0113

Dear Mr. Watkins:

This responds to your May 19, 2010 letter regarding transportation of consumer commodity, ORM-D material under the terms of a special permit authorized by the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether used containers of refrigerant gas that are partially full or have an unknown quantity remaining may be shipped back to the manufacturer as a consumer commodity, ORM-D material.

According to your letter and through information shared during a telephone conversation with a member of my staff, the containers of refrigerant gas are (1) manufactured, marked, and authorized for sale and use under special permit DOT-SP 14188; (2) used to recharge motor vehicle air conditioning systems; and (3) required to be recycled under a new California state regulation. Under the state regulation, retailers will be required to collect used containers from consumers and return them to the original manufacturer for recovery and recycling of the refrigerant gas. You are concerned that retailers do not have the expertise or equipment to determine if a used container is empty, and thus, not subject to the HMR or partially full at an internal pressure such that the contents remain subject. You believe, however, that the retailers are still allowed to offer for transport the partially full containers back to the manufacturer as "Consumer commodity, ORM-D" material in accordance with § 173.156.

Your understanding is correct. The partially full containers may be transported as "Consumer commodity, ORM-D" material under provisions of § 173.156 in accordance with the terms of the special permit. DOT-SP 14188 stipulates that the containers may be reoffered for transportation by a person who is not a holder of the special permit provided no modification or change is made to the packaging (i.e., the container). Discharge of the refrigerant gas is not considered a modification or change. Thus, retailers may ship partially full or empty containers as "Consumer commodity, ORM-D."

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

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

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Exceptions for ORM Materials

10-0113



CURRIE ASSOCIATES, INC.
THE GLOBAL COMPLIANCE PROFESSIONALS

May 19, 2010

Mr. Edward Mazzullo
Director
Office Hazardous Mat Standards, USDOT
1200 New Jersey Ave, SE Second Floor (PH)
Washington, DC 20590

Dear Mr. Mazzullo:

On behalf of a major supplier of a Consumer Commodity ORM-D product, we are requesting a Letter of Interpretation.

Background

The California Air Resources Board (ARB) adopted a regulation to reduce refrigerant gas emissions from DO-IT-YOURSELF servicing of motor vehicle air conditioning systems (MVAC), such as those in automobiles and pickup trucks. The regulations, which include a mandatory recycling program for containers of automotive air conditioning refrigerant gases, became law in the State of California on October 1, 2009.

The recycling program involves consumers, retailers, wholesale distributors and manufacturers. A \$10 deposit is required for each container of automotive refrigerant gas at the time of purchase. Containers are required to be returned within 90 days with a valid, retailer's proof of purchase for refund of the deposit. Retailers will be required to collect all used small containers from consumers and return them to the original manufacturer for recovery and recycling of the contents. The containers are manufactured, marked and authorize for sale and use under several special Permits issued by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration.

The primary concern is when these containers are returned from the customer to the retailer in an empty or partially full condition. Retailers do not have the expertise or equipment to determine if the container is empty or partially full where only a portion of the total product has been used and the internal pressure within the container may remain greater than 40.6 psia.

It is clear that an empty container containing only a residue of an ORM-D material is not subject to the regulations as provided at 49 CFR §173.29 (b)(2)(iv)(A) and (B).

Our request for interpretation pertains to those partially full containers where only a portion of the total product has been used and the internal pressure within the container remains greater than 40.6 psia. PHMSA letters of interpretations #02-0212 dated Jan. 9, 2003 and #08-0073 dated May 20, 2009 allows the Consumer Commodity ORM-D classification for waste products being sent to a disposal site. We believe 49 CFR §173.156 would also allow the Consumer Commodity ORM-D classification when the product is sent back to the manufacturer for recycling.

Question

Are we correct in our assumption that small containers previously filled with a refrigerant gas and authorized to be classified as Consumer Commodity, ORM-D per Special Permits, which are partially full and may contain an unknown quantity of refrigerant gas with an internal pressure greater than 40.6 psia are allowed to be shipped back to the manufacturer for recycling as a Consumer Commodity ORM-D?

Due to the fact that the new law in California will have an imminent impact on commerce your prompt response is appreciated.

Sincerely,

S. C. Duke Watkins

S.C. "Duke" Watkins
Technical Consultant