



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

NOV 21 2011

Christina Kurtz
Manager, Regulations and Packaging
Arkema, Inc.
900 First Avenue
King of Prussia, PA 19406-1308

Reference No.: 11-0201

Dear Ms. Kurtz:

This is in response to your August 26, 2011 e-mail to the Hazardous Materials Information Center and follow-up telephone discussion requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they pertain to the shipper's certification requirement of §172.204. Specifically, you present a scenario where you have contracted with a hazmat trained toller who fills, packages, marks, and labels Arkema materials; and subsequently signs the shipper's certification on Arkema's behalf. The toller is uncomfortable signing the certification because they believe they would be responsible for any potential violations. You believe a violation would come to Arkema since you are the offeror (shipper) and the toller is signing the shipper's certification on your behalf.

Your belief that a violation of the HMR would come to Arkema, as the offeror (shipper) is incorrect. Both the toller, as an agent of the company, and Arkema, as the offeror (shipper) must comply with the HMR, and may be held responsible for any non-compliance. The degree of regulatory liability is usually determined on a case-by-case basis, and is dependent on the facts of the specific situation.

Under the provisions of §172.204(d)(1), the shipper's certification must be signed by a principal, officer, partner, or employee of the shipper or his agent. In the situation you describe, the toller, in preparing the materials for shipment, is acting as the company's agent.

To properly certify a shipment, the person signing the certification must have direct knowledge that the materials are in proper condition for transportation. The toller, being responsible for preparing the shipments without your oversight, is in the position to make that determination, and as such, it is appropriate for the toller, as the company's agent, to sign the certification.

In addition, at your company's direction or through contractual arrangement, the toller, as the company's agent, may perform the functions of the offeror (shipper), such as signing the certification statement on a shipping paper to certify the hazardous materials are being offered for transportation in accordance with the HMR. Under the HMR, any person performing the functions of an offeror must take responsibility for performing those functions in compliance with the applicable rules.

I hope this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Delmer Billings". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

Babich
3172-204
Shipping Papers
IF 0201

From: INFOCNTR (PHMSA)
Sent: Friday, August 26, 2011 4:38 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: HQ Feedback: Hazardous Materials Regulations Question

Hi Carolyn,

This caller requested a formal interpretation to this e-mail. She spoke Robert Benedict from the Regulatory Review Group on 8/2/2011.

Thanks,
Victoria

Victoria Lehman
Hazmat Information Center (HMIC)
<http://phmsa.dot.gov/hazmat/info-center>
(202) 366-1035

Question:

Arkema's question pertains to the following scenario (172.204):

We have a toller that is hazmat trained that marks, fills, packages, and labels Arkema materials. Arkema provides the shipping papers to them. The shipping paper shows Arkema as the shipper. The toller signs the shipper certification on Arkema's behalf. The toller is uncomfortable with signing the certification because they believe they would be responsible for any potential violation if there was one. We believe a violation would come to Arkema since we provided the shipping paper and they are signing it on our behalf. Can you please comment on whether or not our understanding is correct?

Christina Kurtz; Manager Regulations and Packaging
Affiliation: Other (Arkema Inc.)
Address: 900 First Avenue
King of Prussia, PA 19406-1308
Phone: 610-205-7417
Fax: 610-205-7096
Email: christina.kurtz@arkema.com