



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

AUG 15 2012

Ms. Jennifer Eberle
Manager, Transportation Compliance
Veolia ES Technical Solutions, L.L.C.
1 Eden Lane
Flanders, NJ 07836

Ref. No.: 12-0127

Dear Ms. Eberle:

This is in response to your May 31, 2012 letter and subsequent June 14, 2012 telephone conversation and email correspondence with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You state that your company, Veolia ES Technical Solutions, L.L.C. (Veolia) ships hazardous materials that require a Competent Authority (CA) approval prior to shipment. The examples you provide are approvals that assign a proper shipping name and hazard class to Division 4.1 self-reactive materials, per § 173.124(a)(2)(iii)(D) and Division 5.2 organic peroxides per § 173.128(d). The approvals are issued by PHMSA to the original manufacturer or distributor, which contract with Veolia to ship unused and outdated supplies of the same hazardous material in the original packaging as waste to a disposal facility. Your questions are paraphrased and answered below.

Q1. Is it a violation of the HMR for Veolia or another environmental services company to transport a hazardous material with an approval issued to another entity, such as the manufacturer or a distributor?

A1. No, provided you have not made any changes to the material and you comply with all of the requirements detailed in the approval, it is not a violation of the HMR. While most approvals apply specifically to the holder of the approval, such as those issued to certification agencies or cylinder retesters, classification approvals that assign a proper shipping name and hazard class, apply to the specific hazardous material being offered for transportation, not the entity to which the approval was issued.

Q2. May an approval that has been issued for shipments of a certain hazardous material also be used for shipping that same hazardous material to a disposal facility as a hazardous waste, assuming the hazardous material is unused, unaltered and remains in its original packaging?

A2. Yes, an approval that has been issued for shipments of a certain hazardous material may also be used for shipping that same hazardous material, which is unused, unaltered and in its original packaging, to a disposal facility as a hazardous waste, provided the word "waste" precedes the proper shipping name.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is fluid and cursive, with the first name "Robert" and last name "Benedict" clearly distinguishable.

Robert Benedict
Chief, Standards Development
Standards and Rulemaking Division



Winter
\$171.8
\$171.7
Definitions / Competent Authority Approvals
12-0127

May 31, 2012

Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
Attn: PHH-10
U.S. Department of Transportation
East Building
1200 New Jersey Avenue S.E.
Washington DC 20590-0001

RE: Request for Interpretation Regarding the Use of Competent Authority Approvals for Waste Shipments

To Whom It May Concern:

Veolia ES Technical Solutions, L.L.C. (Veolia) is an environmental services company that is involved with the shipment of hazardous materials for which a Competent Authority (CA) letter is required. These CA letters have been issued by PHMSA to the original manufacturer or distributor of the chemical products to facilitate the shipment of these chemicals in commerce. Veolia, on behalf of its customers, is involved with the management of these same chemical products once they are classified as a hazardous waste and require shipment for disposal. These chemical products, unused and still in the original manufacturer's packaging, become wastes simply because they are outdated or no longer needed by the customer. When shipping these wastes for disposal, it has been Veolia's long-term practice to obtain a copy of the CA letter from the original chemical product manufacturer or distributor and then prepare and offer that waste shipment in accordance with the provisions of the CA letter.

Recently, Veolia obtained guidance from a PHMSA Hazmat Regulatory Specialist who clarified that Veolia would not be authorized to utilize a CA letter issued to the manufacturer of the product when that product is shipped by Veolia as a waste to a disposal facility because the shipping name specified in the CA letter would require modification to add the word "waste", an alternative that is not specifically authorized by the CA letter.

Based on this recent guidance, Veolia is requesting a written interpretation from PHMSA to clarify the following:

- 1) Is it a violation of the HMR for Veolia or an environmental services company to utilize a CA letter originally issued to the manufacturer or distributor of a chemical product, when shipping that same chemical product to a disposal

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facility once it is classified as a hazardous waste, assuming the chemical product is unused, unaltered and remains in its original manufacturer's packaging?

- 2) If the answer to question 1 is "yes", then what is PHMSA's guidance for properly classifying and packaging these chemical products once they become a waste and require shipment for disposal? Please note that if PHMSA requires one to apply for a new CA letter for each chemical product for which a CA letter has already been issued simply because the material becomes a hazardous waste, it would be a very costly and time consuming process for Veolia, its numerous customers, the PHMSA's Approval Office, as well as every other environmental company providing similar waste management services. As stated above, since these materials are unused, unaltered, remain in their original packaging and are simply being shipped as hazardous waste for final disposal, it seems unnecessarily burdensome to apply for a new CA letter. Furthermore, to perform testing on these chemical products once they become a hazardous waste in support of a CA letter is extremely costly, and sometimes impossible to complete due to the small quantity of material available for sampling.

Your written response to this request is greatly appreciated. If you require any further information regarding this request please feel free to contact me at jennifer.eberle@veoliaes.com / 973-691-7331 or Tom Baker at tom.baker@veoliaes.com / 973-691-7330.

Thank you,

A handwritten signature in black ink that reads "Jennifer Eberle".

Jennifer Eberle
Manager, Transportation Compliance
Veolia ES Technical Solutions, L.L.C.