



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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NOV 16 2000

Mr. Lawrence W. Bierlein
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Suite 600
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Ref. No. 00-0263

Dear Mr. Bierlein:

This is in response to your September 22, 2000 letter regarding selective testing variations for packagings under the Hazardous Materials Regulations (HMR, 49 CFR Parts 171 to 180). Your request concerned the applicability of the selective testing variations found in § 178.601(g) to a packaging for a material that is toxic by inhalation.

As provided by § 173.226(c), a material that is toxic by inhalation in Hazard Zone A may be packaged in a combination packaging consisting of an inner packaging system and an outer packaging. The inner packaging system consists of an impact resistant inner receptacle packed within a leak-tight packaging. This combination packaging in turn is packed within the outer packaging. Both the inner packaging system and the outer packaging must conform to the performance test requirements of subpart M of part 178. You ask if an inner packaging system which has been tested to packing group I performance level may utilize the variations provided in § 178.601(g).

If the inner packaging system is tested in accordance with the requirements in subpart M of Part 178 and marked in accordance with § 178.503 as a UN standard packaging, then you may use the variations provided in § 178.601(g). If the inner packaging system has not been marked as a UN standard packaging, there is no provision for variations of inner packagings.

I hope this satisfies your request.

Sincerely,


Edward T. Mazzullo

Director, Office of Hazardous
Materials Standards



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September 22, 2000

Mr. Chris Michalski
Office of Hazardous Materials Enforcement
Research & Special Programs Administration
Department of Transportation
820 Bear Tavern Road, Suite 306
West Trenton, NJ 08628

Re: All-Pak; September 9 Exit Briefing

Dear Mr. Michalski:

Thank you for the opportunity to respond to the September 9, 2000, exit briefing you sent to Ray Watt of All-Pak (copy attached). As noted in your telephone conversations with Mr. Watt, I believe there is a difference of opinion on the proper interpretation of the regulations and, by copy of this letter, I am asking Mr. Mazzullo to look at the issue.

All-Pak manufactures combination packaging for use by shippers of TIH materials under the rule applicable to them in 49 CFR 173.226(c). I first would like to note that you allege a violation of this Part 173 provision by All-Pak, and I suggest that as a packaging manufacturer the appropriate citation against the company, if any, would be under Part 178, not Part 173.

The shipper is advised under Section 173.226(c) that, for combination packagings, "both the inner packaging system and the outer packaging must conform to the performance test requirements of Subpart M of Part 178 of this subchapter, at the Packing Group I performance level."

Subpart M of Part 178 is entitled "Testing of Non-Bulk Packagings and Packages," and it covers Sections 178.600-609. Thus, it includes not only Section 178.601(c)(2), which you cite, but Section 178.601(g), which describes selective testing

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variations. As I understand it, you contend that Section 178.601(g) is inapplicable, and that is our point of difference that I ask Mr. Mazzullo to address.

The situation is that All-Pak manufactures, marks, and sells a packaging for TIIH shippers. This is a combination packaging consisting of the inner receptacle holding the product, a leak-tight absorbent pouch inner receptacle, a removable-head canister, a plastic bag, and padding within an outer fiberboard box. This packaging has been third-party tested by Ten-E Packaging.

One of All-Pak's customers, Dow Agro, had filled packages of this type in storage in the field. Their own people discovered that the metal removable head canister inside the filled packaging was rusting and they wanted to change it, in the field, to a unit that was not subject to such corrosion. A plastic removable head canister was considered for this purpose.

All-Pak identified a suitable plastic removable head canister of similar design to the metal unit. The company believed it would be sufficient, but before determining that this was an acceptable substitute, All-Pak performed cold drop testing on this inner canister. The results confirmed All-Pak's expectations. At the same time, All-Pak contacted Ten-E for subsequent testing of the completed packaging but the employee in charge of this project died before this work was completed.

While we acknowledge that prudence would have had All-Pak test this packaging in its entirety, that is not the same as saying that failure to have this testing performed was a violation of the regulations.

Specifically, Section 178.601(g)(1) provides a selective testing variation under which additional testing is *not* required. The conditions of this variation are important. First, the inner packagings of a combination packaging must be of similar design to the tested inner packagings. Here it was not the inner that was changed but instead an intermediate open-head packaging holding two inner receptacles, the bottle and the pouch. The canister was of similar dimensions as the replaced unit.

Second, the material of construction of the inner packagings (glass, plastic, metal, etc.) offers resistance to impact and stacking forces equal to or greater than that of the originally tested inner packaging. The intermediate removable-head unit, by All-Pak's own drop testing and their substantial knowledge of the dynamics of combination packaging, had this strength. To respond to your concerns, All-Pak since has confirmed this fact through Ten-E but, in our view, such confirmation was not required. A copy of the Ten-E retest report will be sent to you by the company under separate cover.

Third, the inner packagings had to have the same or smaller sized openings and the closure was of similar design. The innermost packaging unit and the inner receptacle (pouch) were unchanged. With regard to the removable-head canister, both units are removable head drums and, in fact, the plastic unit with a clip-on feature is more secure than the tested metal cover.

Fourth, cushioning must take up void spaces, and the expanded polystyrene pads do this. Fifth, the inner packaging orientation must be the same, and it was. Sixth, the gross mass must not exceed that originally tested, and it did not.

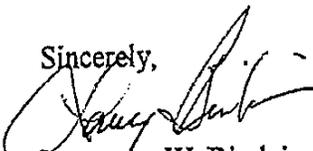
Under Selective Testing Variation 1, therefore, which is an integral part of Subpart M of Part 178, All-Pak did not have to test the plastic intermediate unit at all. The company did perform some tests to bolster their own expectations and subsequently All-Pak had Ten-E re-perform all the tests, but we do not agree with your characterization in the Exit Briefing that All-Pak's actions constituted "probable violations."

You make a second allegation, that the marking on the packaging was not changed. As noted above, your contention only carries weight if one concludes that Variation 1 is inapplicable and, we submit, nothing in the regulations confirms your view on this point.

In conclusion, a customer was faced with an urgent problem with packaging already filled in the field. All-Pak worked with that customer to fashion a solution to that problem. Variation 1 envisions changes to tested packagings without retesting, under certain conditions. All-Pak met those conditions. Subsequent testing by Ten-E verifies that the company's conclusions with regard to this change were valid, and that no safety issue is involved.

Therefore, we ask that you not proceed with this investigation or any subsequent penalty claim. Please contact me if you have any questions on this letter or our reading of the applicable regulations.

Sincerely,



Lawrence W. Bierlein

cc: Edward T. Mazzullo, Director
Office of Hazardous Materials Standards

Ray Watt, All-Pak