



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAR 23 2006

Mr. Robert Gomez
Supervisor, Transport Oversight Unit
State of New Jersey
Department of Environmental Protection
300 Horizon Center
Trenton, NJ 08625-0407

Ref. No. 06-0042

Dear Mr. Gomez:

This is in response to your February 3, 2006 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the bulk, non-DOT specification containers described in your letter are an acceptable means of containment for contaminated soil described as "RQ Hazardous waste, solid, n.o.s., 9, NA3077, PG III" under § 173.240. Additionally, you ask if the transloading operations described in your letter are permissible under the HMR.

Section 173.240(c) authorizes the transportation of certain low-hazard solid materials in non-DOT specification sift-proof portable tanks and closed bulk bins. In order to be deemed sift-proof, the completed package may not permit the escape of any of the hazardous material contained therein. We believe the packaging configurations you describe in your letter are authorized under § 173.240(c). However, it is the shipper's responsibility to ensure that the packaging provides sift-proof containment for the contaminated soil at the time of shipment, and will continue to provide containment until the package reaches its final destination.

In your letter you describe two transloading scenarios. The first scenario involves a dump truck, roll off bin or intermodal container that contains a closed bulk bag of a solid hazardous waste. The closed bulk bag is transferred via gravity to a lined rail car. In your letter, you state that the bulk bag remains closed during the transloading operation and no hazardous material is permitted to escape. The second scenario describes a dump truck, roll off container or intermodal container lined with plastic sheeting and filled with unpackaged, solid hazardous waste. The solid hazardous waste is transferred from the dump truck, roll off bin or intermodal container to the lined rail car via gravity. You state in this scenario, the potential for release of solid hazardous waste during transloading exists because of the draft created from the material falling into the rail car, or from cross winds blowing through the building where the transloading occurs.



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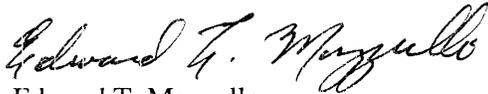
173-240
172-101

All bulk packages must be filled in accordance with §§ 173.24 and 173.24b. In both the scenarios you describe in your letter, the rail car used for the shipment of the hazardous waste must be filled so that under conditions normally incident to transportation, there will be no identifiable (without the use of instruments) release of hazardous materials to the environment (§ 173.24(b)(1)).

For your information, each person in physical possession of a hazardous material at the time an incident occurs during the course of transportation (including loading, unloading, and temporary storage) in which there is an unintentional release of hazardous material or discharge of any quantity of hazardous waste from a package must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 within 30 days of the date of discovery of the incident.

I hope this information is helpful. Please contact us if we can be of additional assistance.

Sincerely,

A handwritten signature in cursive script that reads "Edward T. Mazzullo".

Edward T. Mazzullo

Director

Office of Hazardous Materials Standards



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT PROGRAMS
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JON S. CORZINE
Governor

LISA P. JACKSON
Acting Commissioner

Leary
§ 173.240
§ 172.101

06-0042

CERTIFIED MAIL/RRR
7005 0390 0001 8555 3319

February 3, 2006

Edward T. Mazzullo, Director
Office of Hazardous Materials Safety
PHH-10
400 7th Street, S.W.
Washington, DC 20590-0001

Re: Regulatory Guidance

Dear Director Mazzullo:

I am seeking regulatory guidance related to the truck to rail transfer of contaminated soils. Specifically, the contaminated soils are RCRA hazardous waste and may contain heavy metals such as lead, chromium, arsenic, etc. They are described with the generic shipping description: RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII. The NOS could include one of the RCRA heavy metals, depending on the site being remediated.

The questions I have relate to the packaging and transfer of DOT/RCRA regulated contaminated soils. The soils may be packaged in bulk, non-DOT specification containers such as rolloff containers, intermodal containers, and dump trucks. The design of the roll off and intermodal containers, are such that they have an open top to allow for loading and a rear-opening door that allows for unloading. The tops are then securely closed with a tarp or even a steel lid on some containers.

Column (8C) of the 172.101 table states that for Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII, Part 173.240 must be complied with. Part 173.240 states that sift-proof non-DOT Specification portable tanks, closed bulk bins and motor vehicles are authorized. In addition, subparts A & B must also be complied with and if there are special provisions identified in column 7, they must also be complied with.

Based on this, I am seeking guidance as to whether 173.240 and also the general requirements for packagings and packages at Subpart B (173.24) would be met in the packaging scenarios described below in items one through four.

1. Would a dump truck (non-DOT Specification motor vehicle) simply lined with plastic sheeting, filled with a RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII, covered with plastic sheeting and then covered with a tarp satisfy the requirement for a non-DOT specification "*sift-proof closed vehicle*"?
2. Would a dump truck (non-DOT Specification motor vehicle) loaded with closed bulk bags of a RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII and then covered with a tarp satisfy the requirement for a non-DOT specification "*sift-proof closed vehicle*"?
3. Would a bulk intermodal container or roll off container (non-DOT Specification packages) simply lined with plastic sheeting, filled with a RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII, covered with plastic sheeting and then covered with a tarp satisfy the requirement for a non-DOT specification "*sift-proof closed package*"?
4. Would a bulk intermodal container or roll off container (non-DOT Specification packages) loaded with a closed bulk bag, filled with a RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII, loaded into non-Specification intermodal or roll off containers and then covered with a tarp satisfy the requirement for a non-DOT specification "*sift-proof closed package*"?

The second part of the guidance I am seeking deals with the physical transfer from truck to rail of this DOT/RCRA regulated waste stream while still in transportation. In that the truck to rail transfer of RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII, is occurring at a transfer facility that is not identified as the destination facility. Waste is trucked from an off site remediation project to a truck to rail transfer facility. The DOT/RCRA regulated waste is transferred from a highway mode of transportation to a rail mode of transportation.

I have described two different truck to rail transfer scenarios below as A and B. Both scenarios involve the transfer of RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII from a dump truck, roll off container or intermodal container into a rail car, which is lined with a plastic fiber coated bag material. Once the bag in the rail car is filled it is tied closed and covered with a tarp for transportation on the rail system to the designated destination facility identified on the hazardous waste manifest.

What I would like to know is if scenario A or B would be allowable under DOT's Hazardous Material Regulations. If either A or B would be prohibited, please explain the regulatory basis.

- A. A dump truck, roll off container, or intermodal container is filled with a closed bulk bag of RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII and is transported over the highway. Upon arrival at the rail transfer facility, the dump truck, or trailer containing the

roll off or intermodal container backs up a ramp. The end of the ramp sits over top of a rail car lined with a closeable plastic coated fiber bag. The dump truck, roll off or intermodal container is then tipped upward and the closed bulk bag of regulated material slides out and into the lined rail car.

Note: During this transfer the bulk bag remains closed and none of the regulated material is released to the surrounding area (continued from A, above).

- B. A dump truck, roll off container, or intermodal container is lined with plastic sheeting, which is then filled with a RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII, covered with a tarp to render it closed and then transported over the highway. When it arrives at the rail transfer facility, the dump truck, or trailer containing the roll off or intermodal container is backed up a ramp. The end of the ramp sits over top of a rail car lined with a closeable plastic fiber coated bag. The dump truck, roll off container or intermodal container is then tipped upward and the plastic sheeting and regulated material slide out and into the lined rail car.

Note: The plastic sheeting does not enclose the regulated material during the transfer, it simply aids in the waste sliding out of the dump truck, roll off or intermodal container. During the transfer the plastic sheeting opens up and allows the DOT/RCRA regulated hazardous waste to free fall out of the container and into the lined rail car. The distance between rear door of the container is several feet above the rail car. The potential for the regulated material to be carried away from the rail car during the transfer exists due to the draft created from the regulated material falling into the rail car or from cross winds blowing through the building the transfer is occurring in. The transfer building is not equipped with air handling equipment such as a negative air and filtration system to capture particulate matter emitted during the transfer.

Photographs and short videos of scenario B have been enclosed. **The photographs identified below are of non-DOT/RCRA regulated waste being transferred.** However, DOT/RCRA regulated waste (RQ, Hazardous Waste, Solid, N.O.S., 9, NA3077, PGIII (Soil contaminated with chromium) (D007)) have been observed being dumped at this same location and from the same type of intermodal container before there was a building constructed over the rail car tipping area. These same regulated DOT/RCRA regulated materials may be transferred again under the conditions of scenario B, above once additional remedial projects become available. The photographs and short video are attached to help in your response to the regulatory guidance I am seeking above.

Photograph number DSC01178 is a view standing next to a rail car waiting to be loaded and looking up at the black steel chute where the regulated waste is dumped through from an intermodal or roll off container. The trailer with the roll off or intermodal container back up to the area above and to the left of the black steel chute. The rear door of the container is opened and then tilted upward to dump into the rail car.

Photograph number DSC01190 is a picture from where the trailer containing the intermodal or roll off container back up to and dump their contents into the steel chute that sits above the lined rail car. Visible along the top and bottom of the chute are garden hoses set to mist when dumping is occurring. This misting system has been seen and is ineffective in the control of particulate matter.

Photograph number DSC01189 is a picture of an intermodal container being prepared to off load its contents into and through the steel chute that empties into the lined rail car.

Short video clip number MOV01184 is a video of an actual transfer of waste being dumped from an intermodal container into the lined rail car. The misting is visible, but particulate material still blows around. The bright area behind the transfer is the one side of the building at the end of the rail car being filled, it is just strips of plastic sheeting that is used to help keep waste in the building and wind out. However, it is not real effective.

Short video clip number MOV01187 is a video of an actual transfer from an intermodal container into the lined railcar from the top. Mist is visible from the misting system, but as you can see it blows around from drafts created at the doorway where the intermodal container is dumping.

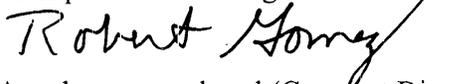
The regulatory guidance above is being requested to help limit the liability the State may be exposed to as a shipper of these materials. As a state agency we are responsible for overseeing and administering site cleanup actions, as such we are also expected to ensure packages we offer are in compliance with DOT's Hazardous Material Regulations. In addition, we also encounter many transporters of DOT/RCRA regulated hazardous waste materials being transported through our state in all of the manners described above.

The rail transfer facility described and included in the photographs above, is a private entity, which has been used by the State of New Jersey and Federal Government. Therefore, it is imperative we receive regulatory guidance to the scenarios outlined in this request.

Your prompt attention to this matter will be greatly appreciated by the State. Should you have any questions, please contact me at (609) 584-4227.

Sincerely,

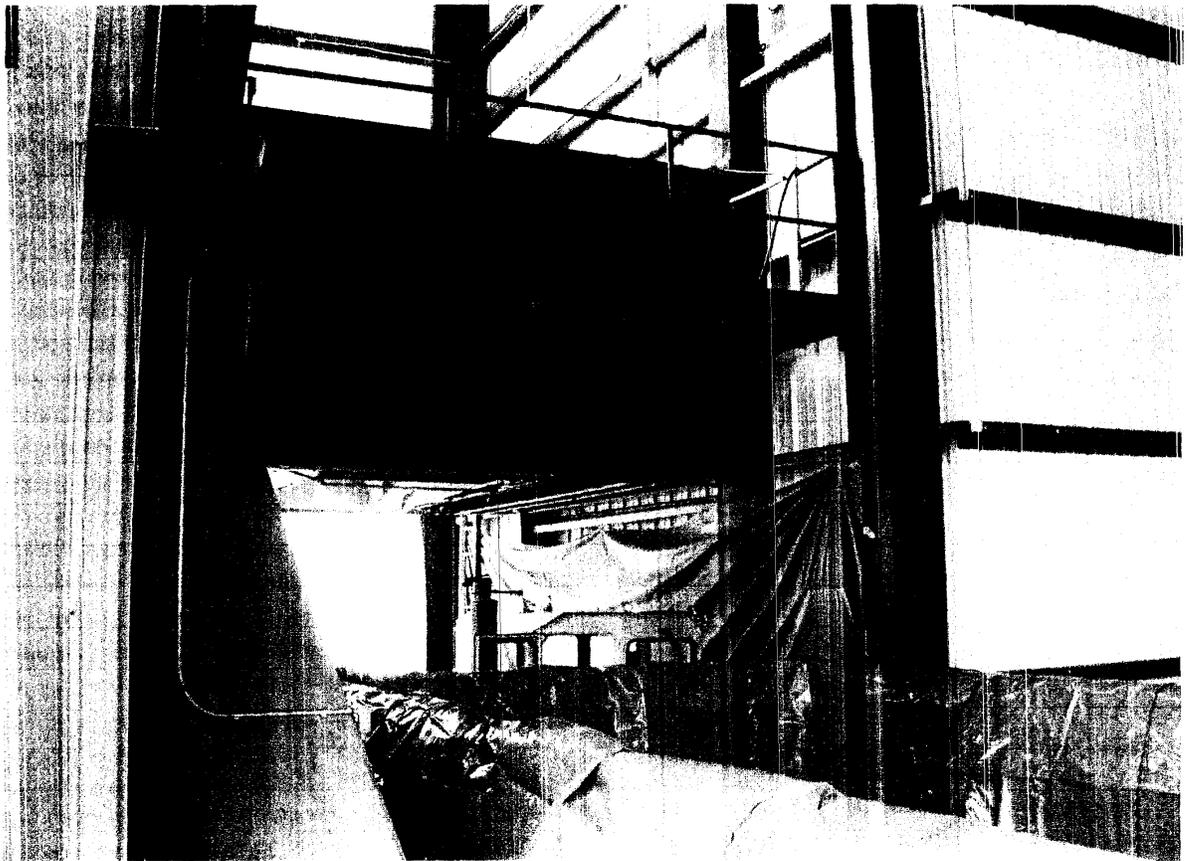
Robert Gomez, CHMM, Supervisor
Transportation Oversight Unit



Attachments enclosed (Compact Disc)
c. Regulatory File

Photograph #DSC01178:

Waste is dumped from the upper left side of this photograph, just above the black steel chute that sits above the gray lined rail car. Between the bottom of the steel chute and the top of the rail car is several feet. The very bright spot behind the rail car is the end of the building; approximately three to five feet from the far side of the black chute. The end of the building behind the end of the rail car is protected by plastic strips, similar to those used in walk in freezers.



Photograph #DSC01189:

This is a photograph of an intermodal container being prepared to transfer its contents into a lined rail car. The rear door will be opened, the operator will move aside and the trailer will back up several feet and it will then be tipped upward. The steel chute the waste is dumped through is just behind the operator.



Photograph #DSC01190:

This is a photograph of the steel chute that roll off and intermodal containers dump their waste through. The waste passes through the chute and it is deposited via gravity into the lined rail car below. See photograph #DSC01178 for the view below the chute where the rail cars are located. Intermodal & roll off containers such as the one visible in photograph #DSC01189, will back up against the bumper visible at the lower portion of this photograph and then dump their load into the chute.

