



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

APR 6 2006

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

Thomas H. Wilson
Vinson & Elkins
First City Tower
1001 Fannin Street, Suite 2300
Houston, TX 77002-6760

Ref. No. 06-0049

Dear Mr. Wilson:

This is in response to your January 3, 2006 letter and telephone conversation with a member of my staff requesting clarification regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your scenario, your client has cylinders filled with a Division 2.2 non-flammable gas that is used to power a portable generator. You ask when the requirements of the HMR would apply to these cylinders.

The HMR apply to transportation of hazardous materials in commerce. Transportation in commerce begins when a carrier takes physical possession of the filled cylinders for purposes of transporting them and continues until delivery of the cylinders to their destination as evidenced by the shipping documentation under which the filled cylinders are moving, such as shipping papers, bills of lading, freight orders, or similar documentation. The HMR also apply to pre-transportation functions such as selecting an authorized cylinder, marking and labeling, and preparation of the shipping papers.

I hope this information is helpful.

Sincerely,

Hattie L. Mitchell, Chief
Regulatory Review and Reinvention
Office of Hazardous Materials Standards



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§ 171.1.
Applicability
06-0049

Thomas H. Wilson twilson@velaw.com
Tel 713.758.2042 Fax 713.615.5704

January 3, 2006

VIA CMRRR #7003 3119 0003 1059 4957

Mr. Joseph Solomey
Assistant Chief Counsel
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
400 Seventh Street, SW
Room 8417
Washington, DC 20590

2006 JAN -9 A 11:18

OFFICE OF CHIEF COUNSEL
U.S. DEPARTMENT OF TRANSPORTATION

Dear Mr. Solomey:

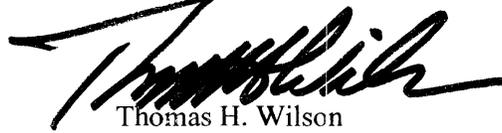
On behalf of one of our clients, we request a written interpretation on the applicability of the federal hazardous materials transportation law, 49 U.S.C. § 5101 et seq. (formerly the Hazardous Materials Transportation Act (HMTA)), and the Hazardous Materials Regulations, 49 C.F.R. Parts 171-180, to the use and refilling of compressed gas cylinders as described below.

Our client is in the development stage of a new product that is intended for sale throughout the United States. The product uses compressed air to power a small turbine for mission-critical backup power systems. The client has two options at its disposal for refilling gas cylinders after a demand event: 1) call a local gas distributor and request replacement of the gas cylinders, or 2) refill the gas cylinders using a compressor at the point of use.

Our client believes, and we request your concurrence, that in order to use option 1, the cylinders must comply with the laws and regulations mentioned above. We also believe, and request your concurrence, that if our client's customers choose to refill their own cylinders as described in option 2, and also reserve the right to transport those filled cylinders, compliance with the laws and regulations mentioned above is again required. In other words, we request agreement with our opinion that the use and refilling of compressed gas cylinders as described herein meets the definition of transport cylinders and does not constitute stationary storage.

If you have any questions on this matter, please do not hesitate to contact me. Thank you in advance for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Wilson", written in a cursive style.

Thomas H. Wilson