



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

JAN 30 2012

Mr. Jason Romero
Spec Ops Company
Bristow Bayou Road
Broussard, Louisiana 70518

Ref. No.: 11-0226

Dear Mr. Romero:

This responds to your e-mail to Mr. Shawn Wolsey of PHMSA's Office of the Chief Counsel regarding "Orange Smoke" used as a signaling device under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You enclosed a photograph of the device. Based on a previous letter to another company concerning a life saving kit containing flares or orange smoke bombs, in addition to other life saving devices, you believe that your product is the same and should be described as "Life saving appliances, not self-inflating," in Class 9. Specifically, you ask whether a material described as "Signal devices, hand, 1.4G, UN0191, PGII," is the correct shipping description for your orange smoke bombs, and if they may be reclassified and renamed as "Consumer Commodity, ORM-D", and shipped as such for purposes of transportation in commerce.

You did not provide any detailed or specific information on the constituents or the hazard characteristics of your product. Under 49 CFR §173.22, it is the shipper's responsibility to properly classify and describe a hazardous material in accordance with Parts 172 and 173 of the HMR. Such determinations are not required to be verified by this Office.

In your e-mail (6/20/11), you described your product (orange smoke) as "Signal devices, hand, 1.4G, UN0191, PGII." In accordance with the HMR, a material described as "Signal devices, hand, 1.4G, UN0191, PGII" must be offered and transported as such. In order to reclassify and rename your product as a "Consumer commodity, ORM-D," it must meet the definition of a consumer commodity in §171.8, and there must be a limited quantity packaging exception in Column 8A of the §172.101 Hazardous Materials Table (§172.101 HMT) for that entry that also contains a provision allowing reclassification to consumer commodity. Therefore, since there are no limited quantity packaging exceptions for the description "Signal devices, hand, 1.4G, UN0191, PGII," you may not reclassify, rename or ship this product as a "Consumer Commodity, ORM-D" in transportation in commerce.

For your information, a life-saving appliance, self-inflating or not-self-inflating, in Class 9, containing small quantities of hazardous materials that are required as part of the life-saving appliance must conform to the requirements of §173.219 (a) and (b). Such products may also not

be shipped as a "Consumer commodity, ORM-D" in transportation in commerce because there are no limited quantity packaging exceptions for that entry in the §172.101 HMT, and thus, no consumer commodity provisions.

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Supko". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ben Supko
Acting Chief, Standards Development Branch
Office of Hazardous Materials Standards

Drakeford, Carolyn (PHMSA)

Engrum
§ 173.219
§ 172.101

From: Supko, Ben (PHMSA)
Sent: Wednesday, September 14, 2011 8:26 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Orange smoke Interpretation Letter request
Attachments: Re: Orange smoke; Re: Orange smoke; Re: Orange smoke; Re: Orange smoke; FW: Smoke Signal; Untitled; Velocity Operations dismissal.pdf

Life-saving Appliances
11-0226

Carolyn,

Please log as an interp. Please request that the specialist work with Shawn. The section is 173.219. The letter is for Jason Romero, from Spec Ops company.

Thanks,

Ben

From: Wolsey, Shawn (PHMSA)
Sent: Tuesday, September 13, 2011 9:45 AM
To: Supko, Ben (PHMSA)
Subject: Orange smoke Interpretation Letter request

Hi Ben,

I had seen that letter. This is the same concept. I suppose I need to ask for an official interpretation letter.

As background, he asked based on a letter that we had written to Velocity Operations that he found on our website. The third paragraph addressing violations 3 and 4 is what he is basing his request on. I am attaching that letter. We said that they had to be shipped as class 9.

In his June 22, 2011 email, he sent a picture of the flare in its screw cap container. He has 850 of them in his garage to sell. He thinks that they are not regulated. UPS told him they are UN0191, signal devices, hand, 1.4G, PG II. He wants to know how to ship them. He is hoping that they are ORM-D. I think they are Class 9, if they are in a kit or something, otherwise, I think that UPS is correct.

I also sent him a picture of the Commercial Orange Smoke Bombs that were involved in the Velocity case, however, they were packaged in a life saving kit.

Thanks,

Shawn

Shawn C. Wolsey
Pipeline and Hazardous Materials Safety Administration
Attorney-Advisor
Hazardous Materials Safety Law Division
1200 New Jersey Avenue, SE.,
PHC-10, Room E24-320
Washington, D.C. 20590
(202) 366-0299 (Phone)
(202) 366-7041 (Fax)

shawn.wolsey@dot.gov

This transmission may contain material that is confidential, privileged, and/or attorney work product for the sole use of the intended recipient. Any review, reliance, or distribution by others or forwarding without express permission is strictly prohibited. Public availability is to be determined pursuant to the Freedom of Information Act, 5 USC 552.

From: Supko, Ben (PHMSA)
Sent: Tuesday, September 13, 2011 9:09 AM
To: Wolsey, Shawn (PHMSA)
Subject: RE: Orange smoke

Here is a link to the letter that I signed on 8/30/11:

<http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnnextoid=ac6aacf99fb12310VgnVCM1000001ecb7898RCRD>

From: Wolsey, Shawn (PHMSA)
Sent: Tuesday, September 13, 2011 8:40 AM
To: Supko, Ben (PHMSA)
Subject: FW: Orange smoke

Hi Ben,

Actually, this is what he is selling. The other picture was from my past case of the item in the kit.

Shawn

Shawn C. Wolsey
Pipeline and Hazardous Materials Safety Administration
Attorney-Advisor
Hazardous Materials Safety Law Division
1200 New Jersey Avenue, SE.,
PHC-10, Room E24-320
Washington, D.C. 20590
(202) 366-0299 (Phone)
(202) 366-7041 (Fax)

shawn.wolsey@dot.gov

This transmission may contain material that is confidential, privileged, and/or attorney work product for the sole use of the intended recipient. Any review, reliance, or distribution by others or forwarding without express permission is strictly prohibited. Public availability is to be determined pursuant to the Freedom of Information Act, 5 USC 552.

From: Jason Romero [<mailto:southernjumper@gmail.com>]
Sent: Wednesday, June 22, 2011 3:41 PM
To: Wolsey, Shawn (PHMSA)
Subject: Re: Orange smoke

On Tue, Jun 21, 2011 at 3:52 PM, Jason Romero <southernjumper@gmail.com> wrote:
Any time you would like

[337-519-7826](tel:337-519-7826) you can call anytime if you would like

On Tue, Jun 21, 2011 at 3:51 PM, <shawn.wolsey@dot.gov> wrote:

Mr. Romero,

I have been in meetings all day and I have not had the opportunity to return your call. What is a good time tomorrow?

Thanks,

Shawn