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DEPT OF TRANSPORTATION
DOCKETS

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SP-14849N
application

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April 16, 2009

PHMSA-2009-0145

Mr. Don Burger
Pipeline and Hazardous Materials Safety Administration
Special Permits and Approvals Office
U.S. Department of Transportation
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Re: Amended Request for Reconsideration of PHMSA's Denial of RBRC's Approval

Dear Mr. Burger:

I am writing to amend the Rechargeable Battery Recycling Corporation's (RBRC) request for reconsideration of PHMSA's denial of RBRC's application for a Competent Authority Approval. This amended request for reconsideration is made pursuant to 49 C.F.R. 107.715 of the U.S. hazardous materials regulations (HMR). It is made in light of recent developments involving RBRC's work with PHMSA and, in particular, Mr. Chris Michalski, under the SISP agreement between RBRC and PHMSA.

RBRC Request for Approval

In its original request for Approval, RBRC sought relief from a number of requirements and provisions in the HMR that it believes do not adequately take into account the characteristics of batteries shipped for recycling or disposal and the logistics of the battery recycling operations at retail stores, municipalities, schools, hospitals and many other locations throughout the U.S. For your reference, these requirements and provisions are listed below as items 1 through 6. RBRC is modifying them, however, and replacing each request with the italicized text immediately below it. We also have provided an explanation of our new request after the italicized text:

Original Request 1: Lithium ion cells and batteries offered for transportation by RBRC in packages manufactured or offered for transportation prior to October 1, 2010 are not subject to the marking requirements contained in SP 188(f).

Revised Request 1: RBRC is authorized to begin using the following marking for consignments of used batteries shipped for recycling or disposal in lieu of the marking required under SP 188(f): "Used Batteries for Recycling: May Contain

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Lithium (ion) and Nonspillable Batteries. FOR HIGHWAY TRANSPORT ONLY – FORBIDDEN FOR TRANSPORT BY AIRCRAFT OR VESSEL.” Lithium (ion) cells and batteries offered for transportation by RBRC in packages manufactured or offered for transportation prior to October 1, 2010 are not subject to the new marking requirements.

Explanation: RBRC will send notices to collection sites that this marking must now be placed on existing boxes in the field. (The marking also will be specified and made available on RBRC’s website.) However, RBRC still requires an exception from any marking requirements for packages manufactured or offered for transportation prior to October 1, 2010 because it will be difficult to guarantee that personnel at all 70,000 RBRC collection sites will place the new marking on their packages of spent batteries.

Original Request 2: Lithium ion cells and batteries offered for transportation by RBRC after October 1, 2008 are not subject to the shipping paper requirements contained in SP 188(f)(2).

Revised Request 2: RBRC is authorized to use a 24-hour emergency response number as part of the new marking in lieu of the documentation requirements in SP 188(f)(2).

Explanation: SP 188(f)(2) requires that each shipment be accompanied by a document, but it does not specify how. UPS has indicated that their tracking systems are not capable of electronically storing such a document and, since there is no specific requirement that the document be in the driver’s possession, we were told to attach it to the package. We believe that providing an emergency/handling instructions telephone number will provide for a greater level of safety than having a separate document on the outside or inside of the package.

Original Request 3: Lithium ion cells and batteries offered for transportation by RBRC and transported by motor vehicle only are not subject to the 30 kg weight limitation requirement contained in SP 188(f)(4).

Revised Request 3: RBRC is authorized to offer for transport and transport packages that exceed the 30 kg limitation in SP 188(f)(4) but must utilize only packages designed not to exceed 30 kg.



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Explanation: RBRC's existing packages are designed to hold no more than 20 kg. However, these packages may occasionally exceed 30 kg simply because a small percentage of the boxes (less than 2%) may contain a large number of small, nonspillable lead batteries that results in a package exceeding 30 kg.

Original Request 4: Lithium primary cells and batteries offered for transportation by RBRC and transported by motor vehicle only are not subject to the marking requirement contained in SP 188(a)(1).

Revised Request 4: Withdrawn.

Explanation: If the marking RBRC is proposing in italics under item #1 is approved, it also will provide relief from SP 188(a)(1).

Original Request 5: Nonspillable batteries offered for transportation by RBRC are not subject to the testing and battery marking requirements contained in 49 CFR 173.159(d)(2), (d)(3), and (d)(4).

Revised Request 5: RBRC is authorized to offer for transport and transport nonspillable batteries that do not meet the requirements in 49 CFR 173.159(d)(3) and (d)(4) and 49 CFR 173.159(f)(1) and (f)(2) and 49 CFR 173.159a(c)(2) and (d)(1).

Explanation: If the marking RBRC is proposing in italics under item #1 is acceptable to PHMSA, it also will provide relief from 173.159(d)(2) and 173.159a(c)(2). However, relief from 173.159(d)(3) and (d)(4) is still required. These relate to the vibration, differential and "rupture/crack case" nonspillable battery testing requirements. In addition, the Approval should incorporate relief from the new provisions at 49 CFR 173.159 and 173.159a applicable to nonspillable batteries as a result of PHMSA's Final Rules HM-224D and HM-215J.

Original Request 6: Nickel cadmium, nickel metal hydride or nonspillable batteries in packages marked to identify lithium ion batteries.

Revised Request 6: Withdrawn.

Explanation: If the marking RBRC is proposing in italics under item #1 is approved, it also will address the issue in item #6.



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Equivalent Level of Safety

Our January 17, 2009 request for reconsideration described the extensive efforts RBRC has taken in the last nine months to strengthen its battery collection program. These steps, together with provisions proposed above, will provide an equivalent level of safety to the existing requirements in the HMR.

Indeed, having a standard warning label/markings on packages containing batteries being shipped for recycling will improve hazard communication to the carriers and handlers of these packages. The requirements also go beyond the current requirements for shipping other types of batteries. Having an emergency response services contracted to provide professional guidelines for re-packaging/handling of damaged shipments and to supply immediate emergency response information also exceeds the level of protection currently required.

Conclusion

Recent RSPA communications have caused some participants in the RBRC program to suspend and reconsider that activity. Without this Approval, even more municipalities and retail locations will do so. To avoid frustrating the well-established and often-applauded RBRC recycling program, and some state laws that mandate recycling, RBRC respectfully requests prompt action on this important Approval request.

* * * *

Thank you for assistance on this matter. Please contact me at 202.719.7102 or my colleague, George Kerchner, at 202.719.4109 if you have any questions regarding this request for Approval.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Weinberg".

David B. Weinberg
Counsel for RBRC