



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

May 8, 2020

Alfred Gorick
President
Gorick Construction Co., Inc.
27 Track Drive
Binghamton, NY 13904

Reference No. 19-0138

Dear Mr. Gorick:

This letter is in response to your December 10, 2019, email and subsequent phone conversations with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to asbestos. Specifically, you ask how the HMR apply to the hauling of construction and demolition debris that may contain asbestos. In your email, you state that your company will be hauling debris from the demolition of a condemned structure that was not tested for asbestos, but must be treated as asbestos-containing materials. You also state that the material is thoroughly wetted during demolition and placed in a double poly-lined trailer for disposal. You further state that once the debris is in the trailer for disposal, it will not be dust-producing. You ask whether these materials should be classified as Class 9 hazardous materials.

The answer is yes. For domestic transportation, the HMR identify asbestos as “NA2212, Asbestos, 9, PG III.” Special Provision 156 in § 172.102 states that asbestos that is immersed or fixed in a natural or artificial binder material, such as cement, plastic, asphalt, resins, or mineral ore, or contained in manufactured products is not subject to the requirements of the HMR. However, asbestos containing material that has been subject to abrading, sanding, or cutting such that the asbestos is no longer contained in the manufactured article is subject to the HMR.

Asbestos must be packaged in accordance with § 173.216. Your company appears to meet the requirements in paragraph (c)(2) of this section. Based on your description of the amount of material that is being hauled by your company, you are likely subject to other requirements of the HMR including, but not limited to, registration, training, and hazardous materials communications.

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

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

From: [Larson, Ryan \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#)
Cc: [Foster, Glenn \(PHMSA\)](#)
Subject: FW: USDOT hauling reqs
Date: Thursday, December 19, 2019 2:04:00 PM

Hi Alice,

Please process this as a request for interpretation, and assign to myself.

Thank you very much!

Ryan

Ryan Larson
Transportation Specialist
Standards and Rulemaking Division
Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Ryan.larson@dot.gov
202-366-5653

From: Al Gorick [mailto:Al@gorickconstruction.com]
Sent: Thursday, December 19, 2019 11:56 AM
To: Larson, Ryan (PHMSA) <ryan.larson@dot.gov>; JLambert@demolitionassociation.com
Cc: Kochman, Benjamin (PHMSA) <benjamin.kochman@dot.gov>; Schoonover, William (PHMSA) <william.schoonover@dot.gov>; Quade, William (PHMSA) <william.quade@dot.gov>; Klinger, Patricia (PHMSA) <patricia.klinger@dot.gov>; Davis, Carey (PHMSA) <carey.davis@dot.gov>; Kelley, Shane (PHMSA) <shane.kelley@dot.gov>; Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>; DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Nickels, Matthew (PHMSA) <Matthew.Nickels@dot.gov>; Trevor Moyer <Trevor@gorickconstruction.com>; Andy Tiftt <Andy@gorickconstruction.com>
Subject: RE: USDOT hauling reqs

Ryan,

We have received and reviewed your email.

One type of material we would be hauling is construction/demolition debris from condemned buildings where no pre demolition asbestos testing was possible.

As such the building debris (wood, masonry, cement, etc) must be assumed to be asbestos containing debris and treated as such on site. All material is thoroughly wetted during demolition as required and placed in a double poly lined trailer for disposal.

Once wetted debris is encapsulated in the double poly lined trailer for disposal the material will not

be broken or dust producing while being transported to a landfill.

Would these loads still be considered Class 9 hazardous and require labeling only or would other requirements apply and if so what would they be?

We appreciate your time and previous email and look forward to your response so we can proceed accordingly

Al

Alfred Gorick | President

Gorick Construction Co., Inc.

27 Track Drive | Binghamton, NY 13904

W: (607) 775-1765 | F: (607) 775-1608

al@gorickconstruction.com | www.gorickconstruction.com

Round G Logo



From: Larson, Ryan (PHMSA) <ryan.larson@dot.gov>

Sent: Wednesday, December 18, 2019 1:10 PM

To: JLambert@demolitionassociation.com; Al Gorick <Al@gorickconstruction.com>

Cc: Kochman, Benjamin (PHMSA) <benjamin.kochman@dot.gov>; Schoonover, William (PHMSA) <william.schoonover@dot.gov>; Quade, William (PHMSA) <william.quade@dot.gov>; Klinger, Patricia (PHMSA) <patricia.klinger@dot.gov>; Davis, Carey (PHMSA) <carey.davis@dot.gov>; Kelley, Shane (PHMSA) <shane.kelley@dot.gov>; Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>; DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Nickels, Matthew (PHMSA) <Matthew.Nickels@dot.gov>

Subject: FW: USDOT hauling reqs

Good afternoon gentlemen,

I understand you have a question about the applicability of the Hazardous Materials Regulations (HMR) to the transport of building debris that may contain asbestos. PHMSA has issued Letters of Interpretation on this subject that may be of assistance to you (see attached). Specifically, these letters state that asbestos that was contained in articles or manufactured products would typically not be regulated as provided in Special Provision 156 in § 172.102. However, when those articles are broken up or there is the possibility that they are now producing dust, they would be a regulated form of asbestos according to the HMR.

Please let me know if I can be of any further assistance.

Thank you,
Ryan

Ryan Larson

Transportation Specialist
Standards and Rulemaking Division
Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Ryan.larson@dot.gov
202-366-5653

From: Kochman, Benjamin (PHMSA) <benjamin.kochman@dot.gov>
Sent: Friday, December 13, 2019 2:48:50 PM
To: Schoonover, William (PHMSA) <william.schoonover@dot.gov>; Quade, William (PHMSA) <william.quade@dot.gov>
Cc: Klinger, Patricia (PHMSA) <patricia.klinger@dot.gov>
Subject: FW: USDOT hauling reqs

Good afternoon,

Please see the below inquiry. Any assistance you can provide so I can get back to Jeff would be much appreciated. Thanks!

Ben

From: Lambert, Jeff [<mailto:JLambert@demolitionassociation.com>]
Sent: Friday, December 13, 2019 2:31 PM
To: Kochman, Benjamin (PHMSA) <benjamin.kochman@dot.gov>
Subject: FW: USDOT hauling reqs

Hi Ben,

Thank you again for your time today. Below is an email a member sent me regarding New York DoT. My member has differing agencies in the state of New York interpreting regulation of trucking of debris and PHMSA regulations and is looking for a letter of interpretation regarding transportation of asbestos. His email explains in greater detail but he is looking for something to point to if he is questioned during inspection.

Any assistance would be appreciated either a contact or an interpretation.

Thanks so much for your time. Let me know if you have any questions and safe travel.

Jeff

From: Al Gorick <Al@gorickconstruction.com>

Sent: Tuesday, December 10, 2019 4:43 PM

To: Lambert, Jeff <JLambert@demolitionassociation.com>

Cc: Trevor Moyer <Trevor@gorickconstruction.com>; Andy Tiftt <Andy@gorickconstruction.com>

Subject: USDOT hauling reqs

Jeff,

Nice chatting today.

I appreciate your prompt response and help.

So here is our situation in a nut shell.

We are completing a demolition of an unsafe/ condemned structure. As such no asbestos testing can be completed and demolition must be done as a "controlled demolition" under NYSDOL guidelines. All workers must be certified asbestos workers and all debris must be handled as RACM while on site. The trucks need to be lined and covered with double layers of poly for containment. Debris must be disposed of as Asbestos containing at the landfill per NYSDEC and have waste manifests identifying it as such.

All of this is being done.

The problem that has come up is with the trucking of the debris and the interpretation of the phmsa regulations. We , along with every other waste hauler and demolition contractor in NY hauls this material as bulk friable construction waste. As discussed, 99% of the time in DOT road checks the trucks and manifests are reviewed and they are allowed proceed to the landfill with no issues. Only 2 times have we been tagged for hauling hazardous waste and told we need to placard such loads and comply with phmsa regulations including being registered as haz waste haulers because asbestos is considered haz waste. This is NOT the case. We would not be allowed to dispose of this material , if it was haz waste, in the landfills we use as they cannot accept haz waste but they can accept asbestos. This situation results from 3 different regulators (NYSDOL, NYSDEC, DOT) trying to regulate the same thing but with different rules.

Simply put, we are hauling C&D debris that MAY be contaminated with asbestos and complying with handling and disposal reqs. It seems that the troopers who have cited us for such are interpreting the haz mat law for enforcement while not fully understanding the law.

We have always been advised that the troopers are suppose to enforce the intent of the law , not interpret the law. Hauling RACM is certainly not the same as hauling hazardous waste and it should not be interpreted as such.

This is not asbestos material that can be pulverized with had pressure as defined by asbestos regs.

I will forward some information that we have found to support out thoughts here.

Simply put, what we are looking for is some type of decision/ letter that states what we hare hauling is NOT considered hazardous material but regulated waste.

Sorry for the long winded email but wanted to try and cover all items.

I will send a couple other emails with links for your review.

Please feel free to stop in and say hello when passing through Binghamton anytime. We are right off I81 in Kirkwood.

Thanks for all of your help.

Al

Alfred Gorick | President

Gorick Construction Co., Inc.

27 Track Drive | Binghamton, NY 13904

W: (607) 775-1765 | F: (607) 775-1608

al@gorickconstruction.com | www.gorickconstruction.com

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From: Lambert, Jeff <JLambert@demolitionassociation.com>

Sent: Tuesday, December 10, 2019 3:37 PM

To: Al Gorick <Al@gorickconstruction.com>

Subject: My Contact

Jeffrey K. Lambert, CAE

Chief Executive Officer

National Demolition Association

2025 M Street NW | Suite 800 | Washington, D.C.

Direct: 202.367.1248 | Mobile: 703.283.5904



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