



U.S. Department
of Transportation

Research and
Special Programs
Administration

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

MAY 28 1999

Mr. Lawrence E. Culleen
Counsel to Cottrell, Ltd.
Arnold & Porter
555 Twelfth Street, N. W.
Washington, DC 20004-1206

Ref. No. 99-0067

Dear Mr. Culleen:

This is in response to your letter dated March 9, 1999, inquiring whether your client's product, "VapoCide™", which is a Class 3, Packing Group II material, qualifies for shipment as a Consumer commodity, ORM-D, under the Hazardous Materials Regulation (49 CFR Parts 171-180).

You stated that the product is composed of alcohols (92%), formaldehyde (.23%), and other non-hazardous materials (7.7%). It is packaged in conformance with the limited quantity provision in § 173.150(b)(2). The product is primarily used by medical and dental professionals to sterilize health care instruments and is not directly distributed for retail sale to personal or household consumers.

The definition of a consumer commodity in § 171.8 includes a material that is packaged and distributed in a form suitable for retail sale for consumption by individuals for purposes of personal use or household use even if not specifically so intended. We agree that the product is suitable for household or individual use and, therefore, qualifies for shipment as "Consumer Commodity, ORM-D."

I trust this satisfies your inquiry. Please contact us if we can be of further assistance

Sincerely,

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



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March 9, 1999

Stevens
§ 171.8
Consumer Commodity
99-0067

VIA FACSIMILE

Edward Mazzullo, Director
Office of Hazardous Materials Standards
U.S. Department of Transportation
400-7th Street, S.W.
Washington, D.C. 20590

Dear Mr. Mazzullo:

I am writing on behalf of Cottrell, Ltd. (Cottrell) to request your written determination that a certain product qualifies for the exemption from the Hazardous Materials Regulations (HMR) for certain materials when they are packaged in limited quantities, renamed as a "Consumer commodity", and reclassified as Other Regulated Materials (ORM-D) pursuant to 49 C.F.R. §§ 173.150(b) and (c).

Cottrell is a manufacturer and distributor of an homogeneous, single-phase liquid product known as VapoCide™ which is composed of ethanol (57%), methanol (35%), formaldehyde (.23%), and other non-hazardous materials (7.7%). VapoCide™ has a flashpoint of approximately 65°F when measured using test methods specified in § 173.120 (ASTM D-56). This product is distributed by Cottrell primarily to wholesalers and to a limited number of end-users. VapoCide™ is intended for use in medical and dental offices in conjunction with a Chemiclave® (a tabletop device used to sterilize health-care instruments).

VapoCide™ is packaged for surface transportation in combination packaging including one liter inner packaging (plastic bottles) within a strong outer packaging (a corrugated cardboard carton) weighing no more than 30 kilograms gross weight. Based upon its flashpoint and composition, VapoCide™ would be considered to be a Packaging Group II material; and when packaged and shipped as described, it qualifies for the limited quantities exemption. See §§ 173.121 and 173.150(b).

Although it is not distributed by Cottrell directly for retail sale to consumers for their personal use, VapoCide™ is packaged within small individual-use bottles and with instructions for its use by individuals in medical and dental offices (some of which could be situated within home offices).¹ Further, Cottrell does not restrict its distributors or

¹ To our knowledge, consumers who undergo certain home therapies or medical treatments also may own or lease a Chemiclave® and require VapoCide™ as an adjunct to its use.

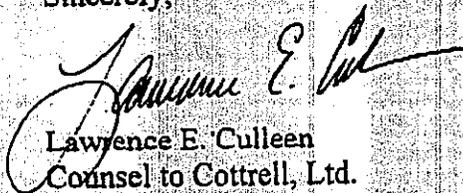
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Edward Mazzullo, Director
Office of Hazardous Materials Standards
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private labelers from distributing VapoCide™ into wholesale or retail markets from which medical professionals and consumers might obtain it. Applying previous interpretations issued by your office concerning functionally identical products, we conclude that VapoCide™ qualifies for reclassification as a Consumer commodity, ORM-D. See §§ 171.8 and 173.150(c) and Ms. Hattie L. Mitchell's April 17, 1998 letter to Dr. Roger L. Goodman, enclosed along with his September 19, 1997 inquiry. This conclusion also is consistent with advice we have received in telephone inquiries made on February 16 and 17, 1999 to Mr. Michael Stevens of the Research and Special Programs Administration (RSPA) hotline.

Cottrell intends to rely upon the advice received from the RSPA hotline staff and requests that you please confirm in writing the accuracy of the interpretation that has been provided as applied to Cottrell's VapoCide™ product. If you require additional information concerning this product, please contact me at once (at 202/942-5477).

Sincerely,



Lawrence E. Cullen
Counsel to Cottrell, Ltd.

Enclosures

cc: Ed Cassinis, Cottrell, Ltd.