



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

APR 12 2001

Ref. No. 00-0288

Mr. Jack Currie
Currie Associates, Inc.
1118 Bay Road
Lake George, NY 12845-4618

Dear Mr. Currie:

This is in response to your October 12, 2000, letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the material and packaging you describe as a sealed pod containing approximately one gram (0.174 gr to 1.2 gr) of potassium hydroxide, a Class 8, Packing Group II material. You are requesting that we make a determination, under § 173.136(b), that this material is not subject to the HMR or to determine that the risk of this material due to packaging is too small to regulate.

You describe the packaging as consisting of the pod sandwiched between two plastic sheets which are coated with absorbent material which, you state, would not allow any material to escape. The pod is attached to one of the two sheets and is only broken when a customer initiates a mechanical device which breaks the pod. At this point, the material is spread evenly across the sheets where it is absorbed and neutralized. A stack of 8 to 10 of these sheet/pod combinations is stacked in a plastic cartridge, which in turn is then packaged in a hermetically sealed foil envelope. The foil envelope is then packaged in a fiberboard box. You ship approximately 50 to 60 of these packages in one shipping case.

It is the opinion of this Office that the item described above is not a hazardous material and, therefore, is not subject to the HMR. This determination is made in accordance with § 173.136(b).

I hope this satisfies your request,

Sincerely,

for Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards



00-0288

173.136

10/13/00



CURRIE ASSOCIATES, INC.
THE GLOBAL COMPLIANCE PROFESSIONALS

October 12, 2000

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
DHM-10
400 Seventh St. S.W.
Washington, DC 20590

Dear Mr. Mazzullo:

On behalf of a client of Currie Associates, Inc. I am requesting regulatory review and determination of applicability of 49 CFR, Part 173, Sub part D, §173.136 (b) in regard to the following described articles.

My client manufactures and distributes several consumer imaging products which differ slightly in their configuration but all of which store a highly viscous fluid in a sealed pod. The sealed pod protects the contents from atmospheric degradation as well as from evaporation until the customer is ready to activate a mechanical device which bursts the pod. The contents of the pod, averaging approximately 1 gram (0.174 gr. to 1.2 gr.) are then spread in a highly controlled manner between two rectangular plastic sheets both of which are coated with absorbent materials. The pod is firmly attached to one of the two rectangular plastic sheets, up to 5 mils thick, before and after it is burst. There are 8 to 10 of these unprocessed plastic sheet "sandwiches" stacked up in a plastic cartridge. Each "sandwich" is mechanically ejected from the cartridge and becomes available to the customer only after the mechanical device is activated.

The formula for the viscous fluid lists ingredients to include approximately 5% to 10% Potassium Hydroxide (and sometimes lesser amounts of Sodium Hydroxide), and non-regulated components such as 0 to 60% titanium dioxide, 40% to 70% water, and trace amounts of other non-regulated chemicals such as a polymeric thickener. The caustic viscous fluid, if it were shipped by itself as a packaged liquid in commerce rather than as a component within the sandwich as described, meets the defining criteria in §173.137(b) for a corrosive liquid, Class 8, in packing group II, attributable to the Potassium (and/or Sodium) Hydroxide.

The ejection of the sandwich within which the viscous fluid is spread employs two different technologies.



RECYCLED

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In one configuration the mechanical device which ejects the sandwich from the cartridge is powered by hand. The customer then retains the processed sandwich external to the mechanical device for a specified period of time, during which time the caustic viscous fluid is being absorbed and neutralized within the sandwich (i.e. inaccessible to the customer). At the end of the specified time, the customer separates the sandwich into two rectangular sheets, one of which is discarded. The sheet which the customer keeps by this time is nearly dry (i.e. the fluid largely has been absorbed) and the remaining fluid on the surface of the coated sheet approaches neutral pH of approximately 7.

In the other configuration, the mechanical device which ejects the sandwich from the cartridge is operated by a battery-powered motor. Also, the sandwich is never separated by the customer, and thus there is no exposure of any fluid, no matter what the pH, to the customer.

In both technologies there is very little danger of human exposure to the corrosive properties of the caustic viscous fluid involved in the process.

In transportation the unprocessed "sandwiches", with the individual pod firmly attached to each, is packaged within a plastic cartridge which is contained within an hermetically sealed foil envelope, within a cardboard box. The cardboard boxes containing the envelopes containing the cartridges containing the "sandwiches" (to which are permanently affixed the small sealed pods), are packed approximately 50 to 60 per shipping case. Even if the completed packages as offered for transportation were to be severely damaged as the result of an accident, it is highly unlikely that there would be any release of the miniscule quantity of the viscous fluid within each package that would be considered harmful. The multiple levels of packaging, including the inner-most pod, are designed to protect the viscous fluid in the product from release until it is subjected to the applied pressure from the mechanical device which ejects the sandwich from the cartridge.

The product is distributed to and dispensed through all types of retail outlets such as drug and variety stores, specialty stores, and department stores. The technology has been in existence in various forms for several years with no known transportation incident data to support controls over its distribution. In fact, there appears to be less risk of exposure in its transportation than in its intended use. The packaging and the Material Safety Data Sheet (MSDS) display warning statements regarding avoiding eye contact with the caustic (unneutralized) viscous fluid within a pod attached to each sandwich. The developer is not known to meet the definition of any other hazard class or to contain any CERCLA Hazardous Substances or Marine Pollutants.

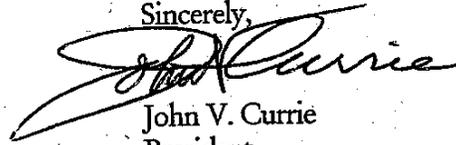
In communication with my client, I have suggested that obvious similarities are evident in comparing this product with the interpretation issued by your office in January of 1991 regarding towlettes that are presaturated with flammable liquid, with no discernible free liquid in the packaging, and thus do not pose a significant hazard in transportation. In that interpretation you state that the packets are not subject to the hazardous material regulations.

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Based upon the above information, and the technical data entered into the MSDS for these types of "sandwiches", it appears that the hazardous characteristics presented by these products in transportation afford less opportunity for human or environmental exposure than those presented through the recommended use of the product by the consumer. The provisions of §173.136(b) seem to address the scenario at issue, since human experience and the data provided regarding the minute quantities present in the sealed pods support the indication that the hazard of this material is less than the elements set out in §173.136(a). We are therefore requesting that RSPA make a determination that these products are not subject to the requirements of 49 CFR, Subchapter C.

Please do not hesitate to contact me if additional data are required to assist you in assessing the applicability of the regulations in 49 CFR to the subject products in question. Thank you for your prompt consideration of this matter as commercial distribution may be impeded in the interim.

Sincerely,

A handwritten signature in black ink, appearing to read "John V. Currie". The signature is stylized with a large, sweeping initial "J" and "C".

John V. Currie
President