



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

NOV 26 2001

Ms. Nicole L. Montag  
Product Safety Specialist  
Akzo Nobel Surface Chemistry LLC  
300 South Riverside Plaza  
Chicago, Illinois 60606-6697

Ref. No. 01-0152

Dear Ms. Montag:

This is in response to your letter of June 12, 2001 regarding the classification of a marine pollutant in accordance with the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You asked whether it is permissible to classify a product as a marine pollutant solely on the basis of aquatic toxicity data.

Section 171.4 prohibits the offering or transportation of a marine pollutant in intrastate or interstate commerce except as required by the HMR. For transportation of marine pollutants, the requirements of the HMR are based on the provisions of Annex III of the 1973 International Convention for Prevention of Pollution from Ships, as modified by the protocol of 1978 (MARPOL 73/78).

With certain exceptions, if all or part of the transportation is by vessel, a hazardous material (e.g., a marine pollutant) which is classed, packaged, marked, labeled, placarded and described in accordance with the requirements of the International Maritime Dangerous Goods (IMDG) Code may be offered and accepted, and transported in the United States (See § 171.12(b)). Paragraph 2.10.2.6 of the IMDG Code allows substances "suspected to possess properties that may meet the criteria of a marine pollutant or severe marine pollutant. . . [to be] transported as a marine pollutant or severe marine pollutant in accordance with the Code". Therefore, in accordance with § 171.12, which authorizes the use of the IMDG Code, it is permissible to classify a substance as a marine pollutant solely on the basis of aquatic toxicity data when that data indicates that the substance may meet the criteria of a marine pollutant.

If the material does not meet the definition of any other hazard class, but is a marine pollutant, it must be described using the generic shipping name for miscellaneous hazardous material (Class 9); that is, "Environmentally hazardous substance (liquid or solid), n.o.s." A packaging containing a marine pollutant must have the MARINE POLLUTANT mark placed on each bulk and non-bulk packaging



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for transportation by vessel. In addition, the words "marine pollutant" must be entered on the shipping paper in association with the basic description. Requirements for marine pollutants do not apply to non-bulk packages transported by a mode of transportation other than vessel.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Delmer F. Billings".

Delmer F. Billings  
Chief, Standards Development  
Office of Hazardous Materials Standards



Engrum  
§ 172.101  
Classification  
Surface Chemistry  
01-0152

June 12, 2001

Mr. Edward T. Mazzullo  
Director, Office of Hazardous Materials Standards  
USDOT/RSPA (DHM-10)  
400 7th St., S.W.  
Washington, DC 20590-0001

Mr. Mazzullo,

We would like written clarification on a DOT classification matter. The issue deals with whether or not it is compliant with DOT regulations to classify a product as a Class 9 Environmentally Hazardous Material, marine pollutant, based solely upon aquatic toxicity data.

Regarding the DOT definition of a marine pollutant, the regulations read:

49CFR171.8 Marine pollutant, means a material which is listed in appendix B to Sec. 172.101 of this subchapter (also see Sec. 171.4) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds: (1) Ten percent by weight of the solution or mixture for materials listed in the appendix; or (2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the appendix.

Regarding the authority of the IMDG over the DOT with respect to marine pollutants, the regulations read:

49CFR171.4 (b) The requirements of this subchapter for the transportation of marine pollutants are based on the provisions of Annex III of the 1973 International Convention for Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78).

Regarding the IMDG definition of a marine pollutant, the regulations read:

2.10.1 Marine pollutant, means substances which because of their potential to bioaccumulate in seafood or because of their high toxicity to aquatic life, are subject to the regulations in Annex III of MARPOL 73/78.

Regarding the assignment of materials to Class 9, the DOT regulations read:

49CFR173.140 Class 9—Definitions. For the purposes of this subchapter, miscellaneous hazardous material (Class 9) means a material which presents a hazard during transportation but which does not meet the definition of any other hazard class. This class includes: (a) Any material which has an anesthetic, noxious or other similar property which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties; or (b) Any material that meets the definition in Sec. 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, or a marine pollutant.

It is the opinion of many hazard communicators that the DOT will not recognize this classification, and in fact, can fine you for overstatement of hazard in this case. It appears that this classification schematic is only an European ADR/RID regulatory requirement. The IMDG considers the use of aquatic toxicity data for Class 9 classification to be *entirely* optional. Additionally, should you choose to use data to classify as marine pollutant, Environmentally Hazardous, Class 9, the IMDG requires the submission of your aquatic toxicity data to GESAMP. Apparently, there are debates as to whether or not certain types of aquatic toxicity data are applicable (eg. freshwater species versus marine species) for Class 9.

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Regarding the use of aquatic toxicity data to classify a material as a marine pollutant, the IMDG regulations read:

2.10.2.6 When a substance, material or article is suspected to possess properties that may meet the criteria of a marine pollutant or severe marine pollutant but is not identified in this Code, such substance, material or article may be transported as a marine pollutant or severe marine pollutant in accordance with the Code. All relevant data should be submitted to GESAMP as appropriate.

In summary, the questions requiring clarification are as follows:

1. Will the USDOT recognize a classification of Class 9 Environmentally Hazardous Material, marine pollutant, based upon aquatic toxicity data,
2. Does the USDOT have an official stance on whether or not freshwater or marine aquatic toxicity data is applicable,
3. If the USDOT does not recognize this classification practice, how should a US subsidiary approach their European products imported into the US, in this classification scheme, to assure compliance.

As we manufacture many products here in the United States which are also manufactured by our overseas facilities, many products we import into the US are classified as Environmentally Hazardous materials based upon ADR/RID requirements. This poses a problem for us here in the US and we would appreciate written clarification that you can provide in resolving this issue.

Kind regards,



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