



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

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

FEB 13 2004

Mr. Michael F. Morrone
Keller and Heckman LLP
1001 G St., N.W., Suite 500 West
Washington, D.C. 20001

Ref. No. 04-0013

Dear Mr. Morrone:

This is in response to your January 13, 2004 letter requesting clarification regarding the applicability of the materials of trade exceptions under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask us to confirm your understanding that your client's (Selective Micro Technologies) cleaning products, as described in your letter, may be offered for transportation and transported under the materials of trade exceptions in § 173.6. You state that all applicable requirements in § 173.6 are met. Your requested confidential treatment for certain information contained in your letter is granted.

Your understanding of the requirements for the materials of trade exceptions and the provisions addressing forbidden materials is correct. Based on the information you submitted, we agree that your client's cleaning products may be offered for transportation and transported under the materials of trade exceptions in 49 CFR 173.6. To identify the material as being less hazardous than in a more concentrated form, you may want to consider including the concentration range of the active component in the common name or proper shipping name. Your unabridged letter and drawings are enclosed.

I hope this information is helpful. If you have additional questions, please do not hesitate to contact this office.

Sincerely,

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

Enclosures



040013

173.6

January 13, 2004

Michael F. Morrone
(202) 434-4124
morrone@khlaw.com

Research and Special Programs Administration
Office of Hazardous Materials Standards (DHM-10)
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Re: Selective Micro Technologies - Request for Clarification of Applicability of
Materials of Trade Exception; Follow up to Letter of Interpretation Ref. No. 03-
0199 Issued November 14, 2003

Dear Sir or Madam:

Our client, Selective Micro Technologies LLC (SELECTIVE MICRO), manufactures several [REDACTED] cleaning products. In response to our August 5, 2003, written request for clarification, the Office of Hazardous Materials Standards, U.S. Department of Transportation (DOT) recently issued a letter confirming that these products may be shipped under the DOT's small quantity exception.¹ We now request further guidance regarding the applicability of the DOT's materials of trade exception, 49 C.F.R. § 173.6, to certain of these products when transported by select cleaning professionals. In particular, we request DOT confirmation that SELECTIVE MICRO's [REDACTED] or other similar products² may be transported under the materials of trade exception when prepared in the manner described herein.

Product Description

As described in our August 5, 2003, letter, SELECTIVE MICRO manufactures several cleaning products that [REDACTED]. The DOT has confirmed that these products may

¹ See November 14, 2003, Letter from Hattie Mitchell to Michael Morrone, Ref. No. 03-0199 (Attachment 1) and August 5, 2003, Letter from Michael F. Morrone to Research and Special Programs Administration, Office of Hazardous Materials Standards (DHM-10) Regarding Selective Micro Technologies - Request for Clarification of Applicability of Small Quantity Exception.

² [REDACTED]

be offered for transportation and transported under the small quantity exception, 49 C.F.R. § 173.4. This present letter concerns the transport of SELECTIVE MICRO's [REDACTED] product, as a material of trade.

SELECTIVE MICRO's [REDACTED] product contains a proprietary device within a two-liter pouch constructed of metalized bi-axially oriented polypropylene with a foil layer attached (BOPP) and linear low-density polyethylene (LLDPE). The pouch is 8 mils thick. [REDACTED]

The envelope is heat-sealed and then secured within the BOPP/LLDPE pouch. The pouch, which is constructed with a polypropylene spout, tamper-evident seal and screw-on cap, is heat-sealed. To use the product, the tamper-evident seal is removed; the pouch is then filled with approximately two liters of water and the cap screwed closed. [REDACTED]

To address these and other site-specific cleaning needs, SELECTIVE MICRO [REDACTED]

2 [REDACTED]

4 See Figures 1 and 2 in Attachment 2.

[REDACTED]. The HDPE container then will be sealed with a child-resistant, tamper-evident sealing mechanism comprised of a leak-tight screw cover and locking latch. The gross weight of the entire assembly will be no more than 25 pounds.

Prior to departing on service calls, the service technician(s) will place the HDPE container bearing the [REDACTED] products in their motor vehicle (e.g., service van). The HDPE container will be secured in the vehicle using shock cords or a comparable method to prevent any movement during transport.

During transport, the [REDACTED]

[REDACTED] The goal is for the service technician to arrive at a customer's facility with the cleaning solution ready to use so that the dirty equipment/instruments/etc. can be cleaned and disinfected without delay.

After finishing cleaning operations at a customer's facility, the service technician will re-seal any pouches with unused cleaning solution and return these pouches to the HDPE container in the transport vehicle. Depending on a particular day's schedule, the service technician may travel to additional customer sites and perform similar operations. At the end of the day, all pouches will be removed from the transport vehicle and disposed of or stored in accordance with product label instructions.

Classification of Filled Pouches

[REDACTED] We understand, though, that 49 C.F.R. § 172.101(d)(1) provides that the prohibition against shipping a forbidden material does not apply if the material is diluted, stabilized or incorporated in a device and is classed in accordance with the hazard class definitions in 49 C.F.R. Part 173. As discussed below, we believe that the small quantity of [REDACTED] will be sufficiently dilute to render the forbidden status inapplicable.

The small quantity [REDACTED] present in each pouch strictly limits the amount of [REDACTED]. By design, [REDACTED]

Material of Trade Exception

DOT's definition of a material of trade encompasses hazmats that are carried on a motor vehicle by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. 49 C.F.R. § 171.8. We believe that the transport of SELECTIVE MICRO's [REDACTED] product by professional service technicians fits within the definition of a material of trade in that the transport is by private motor carriage [REDACTED] in support of a business [REDACTED] that is other than transportation of hazmats.

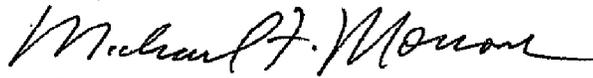
We are requesting confirmation that parties who transport SELECTIVE MICRO's [REDACTED] product in the manner described herein will be entitled to relief under the materials of trade exception. In support of this request, we note that all of the criteria listed in 49 C.F.R. § 173.6 are being met:

- Per § 173.6(a)(1), the material fits within the listed hazard classes/divisions and is less than the corresponding quantity limits. More specifically, the material fits within [REDACTED]. Furthermore, because each pouch will contain [REDACTED] which is well below the regulatory limit of 30 liters.

- Per § 173.6(b), the [REDACTED] are leak-tight and packaged in a sealed, insulated HDPE container that is stowed securely in the transport vehicle to provide added protection against damage.
- Per § 173.6(c)(1), the HDPE container will be marked with the common name of the material as follows: [REDACTED]
- Per § 173.6(c)(4), the service technicians who operate the motor vehicles used to transport the products will be informed they are transporting a hazmat and of the requirements of 49 C.F.R. § 173.6.
- Per § 173.6(d), the aggregate gross weight of all materials of trade present in the service technician's vehicle will not exceed 440 pounds. The maximum gross weight of the products when packaged in the manner described herein will be more than an order of magnitude less than the specified limit.⁵

Please advise whether you agree that SELECTIVE MICRO's [REDACTED] product, when transported as described herein, qualifies for the materials of trade exception. Should you have any questions or require further information, please do not hesitate to contact us. We look forward to receiving your response as soon as possible so that SELECTIVE MICRO's customers may transport the product accordingly.

Sincerely,



Michael F. Morrone

Attachments:

1. November 14, 2003, Letter of Interpretation, Ref. No. 03-0199
2. [REDACTED]

⁵ [REDACTED]