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

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

DEC 8 2004

Mr. John H. Lapoint
President
Lapoint Industries
P.O. Box 1667
48 Commercial Street
Lewiston, Maine 04241-1667

Ref. No.: 00-0158

Dear Mr. Lapoint:

This is in further reference to your letter dated May 23, 2000 and our reply dated September 21, 2000, regarding the proper description and marking of a composite intermediate bulk container (IBC) under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you asked whether your packaging as described meets the definition of a "11HH2" composite IBC.

Upon further evaluation, we have determined that the packaging referenced in your May 23, 2000 letter does not conform to the specification for a composite IBC, and, thus, may not be marked with the IBC code designation, "11HH2." As specified in § 178.706(b), rigid plastic IBCs consist of a rigid plastic body, which may have structural equipment, together with appropriate service equipment. The outer plastic material of your packaging acquires its rigidity only when it is bonded to a rigid, multi-wall, corrugated support. It is the opinion of this Office that a flexible plastic material bonded to fiberboard is not a rigid plastic material as specified in § 178.706, and does not exhibit strength relative to its capacity and the service it is required to perform. If you can demonstrate that your packaging provides a level of safety equivalent to the United Nations (UN) 11HH2 specification, or another IBC specification, you may wish to apply for an exemption for your packaging. The procedures for applying for an exemption are found in § 107.105 of the HMR.

I hope this information is helpful.

Sincerely,

Edward T. Mazzullo

Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards

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Lapoint Industries

P.O. Box 1667
48 Commercial Street
Lewiston, Maine
04241-1667

tel: 207-777-3100
fax: 207-777-3177

www.lapointindustries.com

May 23, 2000

Mr. Edward Mazzullo
U.S. Department of Transportation
Research and Special Programs Administration
Office of Hazardous Materials Safety
400 Seventh Street.SW
Washington, DC 20590
United States of America

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§178.801(i)
00-0158

Dear Mr. Mazzullo,

The purpose of this letter is to follow up my recent visit with several of your colleagues in Washington, D.C. Our discussion focused on the main point of what should be the most appropriate marking for our product called the "Waste Wrangler." Based on interpretation of the published definitions, as well as the intended use of our product, we believe our container line fits the requirements for composite packaging (11HH2). Therefore, we desire to mark our products as such.

Lapoint Industries, Inc. is a manufacturer of both rigid and flexible intermediate bulk containers (FIBC), designed to meet the specific needs of our valued customers. The rigid containers differ significantly in use, design and application. The product selling prices differ greatly as well, depending on configuration and intended use.

The "Waste Wrangler" product is a stand-alone, rigid container. Once filled, the container will form a rectangular facing, which markedly resembles a box. Although this product might not meet the traditional or stereotypical perception of a box, according to some, we believe our packaging accurately and explicitly meets every definition of "composite packaging, plastic, rigid and box." We base this on our understanding of the language used in the IMDG Code and 49CFR.

When I came to Washington, I hoped that bringing an actual container to demonstrate would give everyone at the meeting a hands-on experience with our product. Hopefully, this would bring about greater clarity and enlightenment to those unfamiliar with how our product performs in the field. We have found that an actual unit aids one to conceptualize and visualize the product's intended use in the field, as well as to reveal the significant differences in design, function and application from FIBCs. These other containers are known as "supersacks" or "bulk bags," as compared to our "Waste Wrangler".

To further clarify the difference between these types of containers, the "Waste Wrangler" inner and outer packaging form an integral and inseparable bond. This construction protects the inner packaging from deformation and failure, making the inner and outer components co-dependent. The Waste Wrangler's self-standing and rigid frame affords the customer the ability to fill the container without any support equipment. Once filled, the frame will form a rigid outer shell. This sharply contrasts to a flexible intermediate bulk container, which requires structural support to fill the container and, once filled, rounds out like a balloon or sack.

After our team of packaging experts delved into the definitions of "a composite packaging, box, rigid and plastic," we believe our research supports our position in calling the Waste Wrangler a composite packaging.

In order to clarify our stance further, I would like to quote these definitions directly from either the IMDG Code or 49CFR. The following definition underscores the basis for which we arrived at calling our container a composite packaging, as follows:

> "...an intermediate bulk container which consists of a rigid outer packaging enclosing a plastic inner receptacle together with any service or other structural equipment. The outer packaging of a composite intermediate bulk container is designed to bear the entire stacking load. The inner receptacle and outer packaging form an integral packaging and are filled, stored, transported, and emptied as a unit."

As I previously stated, our packaging consists of an inner lightweight plastic material combined with a heavier weight outer plastic material, creating a receptacle to receive a rigid, multi-wall, corrugated support. We provide an additional removable inner receptacle, as permissible by 49CFR and confirmed in correspondence with DuPont, to aid in the retention of any liquid that might separate from the solid material while being transported.

The IMDG Code defines an "Outer Packaging" as follows:

> "... is the outer protection of a composite or combination packaging together with any absorbent materials, cushioning and any other components necessary to contain and protect inner receptacles or inner packagings."

We believe the combination of our heavyweight outer plastic material, coupled with the rigid, multi-wall corrugation support meets this criterion.

The next definition we turned to was the definition of a box. A box, as defined in the IMDG Code – page 0507 and confirmed in 49CFR 171.8, means

> "...a packaging with complete rectangular or polygonal faces, made of metal, wood, plywood, reconstituted wood, fiberboard, plastic, or other suitable material. Holes appropriate to the size and use of the packaging, for purposes such as ease of handling or opening, or to meet classification requirements, are permitted as long as they do not compromise the integrity of the packaging during transportation, and are not otherwise prohibited in this subchapter."

The IMDG Code uses similar language when defining a box. Not only does our packaging have a rectangular face when empty, the packaging is unmistakably rigid and square when full.

The definition of a plastic means "polymeric materials" (i.e., plastic or rubber). This definition is also used in defining an FIBC, so we believe that this definition covers the material used in our products.

Finally, the compelling piece of information solidifying our position was based on the following IMDG Code statement under "Equivalences". Quoting directly, it says

"In order to take into account progress in science and technology, there is no objection to the use of packagings having specifications different from those recommended in this Code, provided that they are at least equally effective, acceptable to authorities concerned and able successfully to withstand the tests described in Annex 1 to this Code. Moreover, methods of testing, other than those described in Annex 1 to this Code, are acceptable provided that they be at least equally effective."

Our packaging experts interpret this to mean that the governing bodies of DOT and IMDG recognize the importance of encouraging innovation and do not stifle creativity. Instead, they focus their efforts in creating performance standards all containers must conform to and allowing the container manufacturers the latitude to determine the design type based on the definitions outlined above.

We concur with the DOT and IMDG Code position in promoting , fostering and promulgating creative thought to ultimately meet the future needs of global markets. We have witnessed first-hand the efforts to reduce packaging waste all over the world and, in particular, the United States of America. The disposal cost for spent packaging is climbing at unprecedented rates, and the urgency to reuse packagings has heightened exponentially. Our patented products meet this future need right now and exceed the packaging standards for a composite and flexible IBC. We look to you to give us your concurrence with this very important issue.

We would appreciate your formal, written response as soon as possible, so that we can plan our next move. Thank you very much for your thoughtful consideration. We look forward to hearing from you very soon.

Sincerely yours,

John H. Lapoint III
President