



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

AUG 20 2001

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

Anne N. Christenson, Esq.
Law Offices of Fennemore Craig
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012-2913

Ref. No. 01-0136

Dear Ms. Christenson:

This is in response to your letter dated May 28, 2001, requesting clarification of the term "offeror" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you present the following two scenarios and ask whether these activities are subject to the HMR.

In the first scenario, Company A performs all offeror functions, such as selecting and preparing packages for shipment and generating shipping papers for their product. As such, Company A would be considered the offerer for purposes of HMR applicability.

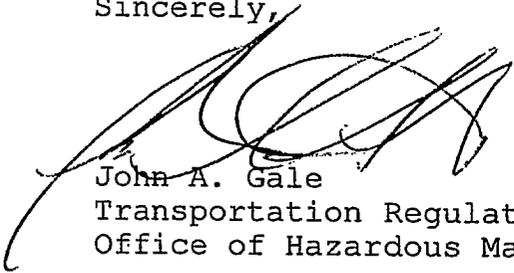
In the second scenario, Company B physically prepares packagings containing Company A's product and generates shipping papers with Company A's oversight. Company A selects the packaging for their product. Because Company A and Company B split the performance of offeror functions, both companies are subject to the HMR as offerors.

The requirements of the HMR apply to persons who offer for transportation, accept for transportation or transport hazardous materials. Any one of several entities in a transportation movement could perform, singly or in combination, regulated functions (e.g., preparation of shipping papers, selection of packaging, etc.).

For purposes of administration and enforcement of the HMR, any person who performs, attempts to perform, or is obligated (by contract or otherwise) to perform any of the functions assigned by the HMR to an offeror in § 173.22 is subject to the HMR as an offeror.

I hope this satisfies your request.

Sincerely,



John A. Gale

Transportation Regulations Specialist
Office of Hazardous Materials Standards

BAH
\$173.22
Shipper's Responsibility
01-036

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May 28, 2001

Mr. Ed Mazzullo, Director
Office of Hazardous Materials Standards
Research and Special Programs Administration
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Request for Written Interpretation

Dear Ed:

I am writing this letter on behalf of a client who ships hazardous materials. Under the following scenarios, for purposes of applicability of 49 C.F.R. parts 170 - 179, are one or both of these companies offerors of the hazardous material ("product")?

Scenario 1: Company A owns the product. Company A manufactures the product. Company A prepares the product for shipment by marking, labeling, and packaging the product. Company A prepares the shipping papers and signs the shipper's certification.

Scenario 2: Company A owns the product, it provides the raw materials to manufacture the product, and it always has title to the product. Company B manufactures the product. Company B prepares the product for shipment by marking, labeling, and packaging the product. Company A tells Company B how to prepare shipping papers. Company B prepares the shipping papers, on Company A's bill of lading, and signs the shipper's certification. Company A selects the packaging (a cargo tank) and arranges for transportation of the product.

Thank you for your assistance with this matter. Please contact me if you have any questions.

Sincerely,

Anne N. Christenson

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

DEC 5 1994

Ms. Alice Walker, Ph.D.
Regulatory Consultant
47 Country Club Drive
Senatobia, MS 38668

Dear Dr. Walker:

This is in response to your letter dated September 28, 1994, regarding the classification of certain mixtures containing copper hydroxide. Specifically, you ask if we concur with your opinion that mixtures containing 77% and 57.6%-61.4% copper hydroxide are not subject to the Hazardous Materials Regulations.

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) govern the transportation of hazardous materials in commerce. Under 49 CFR 173.22, it is the shipper's responsibility to properly classify a hazardous material. However, based on the information provided in your letter, we agree that the mixtures of copper hydroxide described in your letter are not subject to the HMR.

I hope this satisfies your inquiry.

Sincerely,

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

September 28, 1994

Mr. Delmer F. Billings
Chief, Regulations Development
Office of Hazardous Materials Standards
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

OCT - 6 1994

A. L.

Re: Request for Interpretation of the Appropriate Shipping Classification for Copper (or Cupric) Hydroxide Products

Dear Mr. Billings:

I am writing this letter to you on behalf of Cuproquim Corporation, Agtrol Chemical Products, and Griffin Corporation who manufacture and ship in the United States copper (cupric) hydroxide products. There is much concern and discussion within these companies about the appropriate shipping description for two of their formulations. These are (1) a 77% copper hydroxide dry material, variously shipped as Blue Shield DF, Blue Shield WP, Champion WP, and Kocide 101, and (2) a 57.6 - 61.4% copper hydroxide dry product shipped as Blue Shield 40DF, Agtrol Champ Formula II DF, and Kocide DF.

On DOT's Hazardous Materials Table in 49 CFR § 172.101, copper (cupric) hydroxide is not listed. However, a category called "copper based fungicides" is. These manufacturers are currently shipping their products under this category. Their shipping description reads: "Copper based pesticides, solid, toxic, n.o.s., (copper hydroxide), 6.1, UN 2775, III.

I have been asked to prepare a consolidated acute toxicology profile in an effort to confirm or correct this shipping description. I have duplicated the information I found below:

Copper Hydroxide (77%)*:	Acute Tox. Profile	DOT Limits
Acute Oral LD50 - Rats:	male - 2400 mg/kg female - 2200 mg/kg	200 mg/kg (solid)
Acute Dermal LD50 - Rabbits:	>2000 mg/kg	1000 mg/kg
Acute Inhalation LC50 - Rats:	28.8 mg/L (nominal concentration on a 1 hr basis)	10 mg/L

*(Includes Cuproquim Blue Shield DF, Cuproquim Blue Shield WP, Agtrol Champion WP and Griffin Kocide 101).

Letter to Mr. Billings
September 28, 1994
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Copper Hydroxide DF (57.6-61.4%)*:

Acute Oral LD50 - Rats:	>646 mg/kg	200 mg/kg (solid)
Acute Dermal LD50 - Rabbits:	>2000 mg/kg	1000 mg/kg
Acute Inhalation LC50 - Rats:	>55.51 mg/L (nominal concentration on a 1 hr basis)	10 mg/L

*(Includes Cuproquim Blue Shield 40DF, Agtrol Champ Formula II DF, and Griffin Kocide DF).

It is my interpretation that none of these copper hydroxide products falls under the criteria for oral, dermal, or inhalation toxicity as prescribed in 49 CFR 173.132(a)(1)(i)(ii)(iii) and, therefore, none of them meets the definition for 6.1 poisonous materials.

Further in my quest for hazardous material shipping information, I determined that copper (cupric) hydroxide is not on Table 1 of the Hazardous Substances List. It is not included on the Marine Pollutant List. I have concluded that these materials are not regulated by DOT.

Mr. Billings, the inclusion of the generic, "copper based pesticides," on the Hazardous Materials Table has caused so much confusion within industry and the regulated community that a letter from me will not be sufficient to change current shipping descriptions. However, confirmatory correspondence from you will greatly help need-to-know manufacturers, transporters, and regulatory officials. May we hear from you soon? I understand that labeling changes to materials meeting the toxicity criteria for poisonous materials in Division 6.1, PG III will be required January 1, 1995. Your reply before then would be extremely helpful.

Sincerely,



Alice Walker, Ph.D.
Regulatory Consultant

/s

cc: P. Haaf, J. Kirk, L. Horne, Cuproquim
H. O'Neal, Agtrol
J. Yowell, Griffin
J. Rathvon, Piper & Marbury