



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

MAY -1 2009

Mr. Timothy W. Wiseman
Scopelitis, Garvin, Light, Hanson & Ferry
Attorneys at Law
10 W. Market Street, Suite 1500
Indianapolis, Indiana 46204

Ref. No. 09-0068

Dear Mr. Wiseman:

This responds to your March 11, 2009 letter on behalf of CVS Transportation L.L.C. You request clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they apply to limited quantities and materials of trade.

According to your letter, CVS Transportation L.L.C. is a licensed private and for-hire common and contract motor carrier providing transportation services through a network of dedicated distribution centers solely to CVS companies. Your letter includes a list of shipping descriptions for various photo development products that CVS Transportation, L.L.C. commonly transports from distribution centers to CVS store locations. The list includes Division 5.1 (Oxidizer), Class 8 (Corrosive), and Class 8/Division 6.1 (Corrosive/Poisonous) materials. The products are transported in inner packagings placed inside strong outer packagings, typically totes. Each inner packaging contains a maximum of 4 liters or 4 kilograms of material, and the capacity weight rating of the totes is 60 pounds. The products listed in your letter are used by CVS stores in direct support of their principal business of selling retail merchandise such as photos and photo developing services, and are not offered for retail sale to the public.

Your questions are summarized and answered as follows:

Q1. May the listed materials, packaged as described, be transported as “limited quantities” under the HMR?

A1. Yes. The photo development materials listed in your letter may be shipped as “limited quantities” provided they are prepared and offered for transportation in accordance with all applicable limited quantity provisions. Note that you may utilize limited quantity exceptions only when the exception is authorized for the specific material by reference in Column 8A of the Hazardous Materials Table (HMT; § 172.101).

Q2. May CVS Transportation L.L.C. transport the listed materials in accordance with the materials of trade exception in § 173.6?

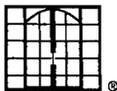
A2. Yes. A “material of trade” is defined in § 171.8 as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. A “private motor carrier” is a carrier that transports the business’s own products and does not provide such transportation service to other businesses. The photo development materials may be transported as “materials of trade” in accordance with § 173.6, provided the vehicle operates as a private motor carrier and the shipment otherwise conforms to the provisions of § 173.6.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles E. Betts', written in a cursive style.

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards



SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY
ATTORNEYS AT LAW
INDIANAPOLIS
CHICAGO • WASHINGTON, D.C. • LOS ANGELES • KANSAS CITY • CHATTANOOGA • DETROIT

10 W. Market Street, Suite 1500 Indianapolis, Indiana 46204
phone (317) 637-1777 fax (317) 687-2414
www.scopelitis.com

TIMOTHY W. WISEMAN
twiseman@scopelitis.com

RICHARD A. CLARK
rclark@scopelitis.com

Eichenlaub

\$171.8

\$173.6

\$173.152

\$173.154

Limited Quantity

09-0068

March 11, 2009

Mr. Edward T. Mazzullo, Director
PHMSA Office of Hazardous Material
Standards
U.S. Department of Transportation
Att: PHH-10
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Request for Clarification on "Limited Quantity" and
"Materials in Trade Exceptions to the Hazardous Material
Regulations

Dear Mr. Mazzullo:

CVS Transportation, L.L.C. ("CVS") requests that the Pipeline Hazardous Material Safety Administration ("PHMSA") provide an interpretation, by letter, of the "limited quantities" exceptions to the packing and labeling requirements for certain photo development materials, described in Attachment A to this letter, under 49 C.F.R. § 173.152(b)(2) and § 173.154(b)(2). In addition, CVS requests interpretation of the applicability of the exceptions to shipping paperwork requirements under the "Materials of Trade" exception in 49 C.F.R. § 171.8.

CVS is a licensed private and for-hire common and contract motor carrier. It provides transportation services through a network of dedicated distribution centers solely to CVS companies, including approximately 2,500 stores ("CVS Stores"). Larger quantities of retail and other goods are shipped to the distribution centers ("DC") where the quantities are broken down into smaller amounts needed by each individual CVS store.

CVS Stores offer "in-store" photo development services using small amounts of the various photo developing materials. CVS DCs receive photo developing materials in larger outer containers which have individual smaller containers. The individual containers of photo development materials transported to CVS Stores generally contain less than one liter or one kilogram of hazardous material and no individual containers transported in this way hold more than 4 liters or 4 kilograms of the material respectively.

The individual containers of material are packed in a strong outer packaging in the form of plastic containers ("Totes") with sufficient dunnage around the individual containers to prevent them from moving. The Totes have lids which are closed after packing. The Totes have a capacity weight rating of 60 pounds and are rated to withstand up to 250 pounds stack capability and 320 pounds of static stack capability. We believe that the plastic Totes with interlocking lids meet the definition of "strong outside container" under the Regulations and qualify as a Category 2H2 Container under § 178.518(b)(6). Existing inner containers of the photo developing materials meet the inner packaging requirements.

Because no shipment of any individual container exceeds 4 liters or 4 kilograms maximum net capacity, CVS believes that the shipments of photo developing materials in Attachment A which fall within Hazard Class/Division 5.1 would be exempt from any other packaging or labeling requirements as "limited quantities" under 49 C.F.R. § 173.152(b)(2). Those photo developing materials falling within Hazard Class/Division 6.1 and 8 in the attached list could also be exempt from any labeling requirements or additional packaging requirements under 49 C.F.R. § 173.154(b)(2).

Also, because each of the photo developing materials are only used by CVS Stores in direct support of the principal business of CVS selling retail merchandise such as photos and photo developing services, and none are offered for retail sale to the public, CVS believes the shipments of photo developing materials qualify as "materials of trade" under 49 C.F.R. § 171.8 and thus are also exempt from the shipping paperwork requirements under 49 C.F.R. § 173.6(a)(1)(ii), as they are transported between DCs and CVS Stores.

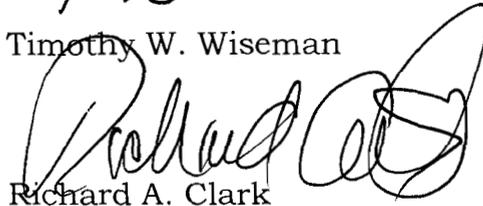
Based upon the facts described in this letter, CVS Transportation, L.L.C. requests an interpretation of the application of the "limited quantities" and "materials of trade" exceptions under the Hazardous Material Regulations to shipments of the materials in Totes from its DCs to its retail stores.

If you have any questions concerning this request for interpretation, or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Timothy W. Wiseman



Richard A. Clark

RAC/kkc

H:\Users\kchimento\WPWIN\WPDOCS\RAC\CD\CVS Transportation\Mazzullo 2-20-09.doc

Attachment A

HAZARDOUS MATERIALS TO BE TRANSPORTED

The following materials are used by CVS Stores for photo development services and are transported in small quantities from CVS Transportation's Distribution Centers to CVS retail stores.

CVS Group	Proper Shipping Name	Description	Hazard Class/ Division	I.D. Number	Packing Group
1.	Oxidizing solid, n.o.s. (Dichloroisocyanuric Acid)	Kodak Ektacolor PC 111 Rinse Tablets/RA-4	5.1	UN1479	III
2a.	Corrosive Liquid, Acidic, Inorganic, n.o.s. (Bis(Hydroxylammonium Sulfate))	Kodak Flexicolor Developer Replenisher LORR Part B, Kodak Flexicolor SM Tank Developer/C-41SM, Part B, Kodak Negative Film FC Tank Developer, Part B, Kodak Flexicolor SM Processing Unit F1/C41SM, Part 4, Kodak Negative Film Processing Cartridge FC2	8	UN3264	III
2b.	Corrosive liquid, acidic, organic, n.o.s. (Organic Amine Sulphate)	Kodak Ektacolor SM Processing Unit P1/RA-2SM, Part B, Kodak Ektacolor SM Tank Developer/RA-2SM, Part B	8	UN3265	III
2c.	Corrosive Liquid, Basic, Inorganic, n.o.s. (Potassium Carbonate)	Kodak Flexicolor SM Tank Developer/C-41SM, Part A, Kodak Ektacolor SM Tank Developer/RA-2SM, Part C, Kodak Ektacolor SM Processing Unit P1/RA-2SM, Kodak Flexicolor SM Processing Unit F1/C41SM, Part 3, Kodak Rapid Developer Replenisher	8	UN3266	III
2d.	Corrosive Liquid, n.o.s. (Ferric Ammonium)	Kodak Flexicolor RA Bleach replenisher NR, Kodak Flexicolor SM Processing Unit F2/C-41SM Version 2.1, Bleach, Kodak Flexicolor SM Tank Bleach/ C-41SM, Working Solution, Kodak Negative Film FC Tank Bleach MX 1931, Kodak Negative Processing Cartridge FC1, Part 2	8	UN1760	III

CVS Group	Proper Shipping Name	Description	Hazard Class/ Division	I.D. Number	Packing Group
2e.	Corrosive Liquid, n.o.s. (Potassium Carbonate)	Kodak Ektacolor PC 111 Tank Developer, Part A, Kodak Flexicolor Developer Replenisher LORR Part A, Kodak Negative Film FC Tank Developer, Part A	8	UN1760	III
2f.	Corrosive Liquid, n.o.s. (P-Phenylenediamine Derivative)	Kodak Negative Film FC Tank Developer, Part C	8	UN1760	III
3.	Corrosive Liquid, Toxic, n.o.s. (P-phenylenediamine derivative)	Kodak Flexicolor Developer Replenisher LORR Part C, Kodak Flexicolor SM Processing Unit F1/C41SM, Part 1, Kodak Flexicolor SM Tank Developer/C-41SM, Part C	8/6.1	UN2922	III