



U.S. Department  
of Transportation

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**Pipeline and Hazardous  
Materials Safety  
Administration**

JAN 05 2016

Ms. Nancy Fitz  
Office of Pesticide Programs (7506P)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Reference No. 14-0215

Dear Ms. Fitz:

This is in response to your e-mails and telephone conversations with members of my staff in which you requested clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to drum and ball-shaped tanks attached to trailers. Specifically, you ask if these tanks may be used to deliver liquid pesticides to farmers and if they are non-specification tanks under the HMR.

In your letter, you included photographs and descriptions of several bulk ball and drum tanks attached to trailers, which we have summarized in the table below, and information on their size and capacity.

Tank Type	Capacity	Diameter	Length/Width/Height	Pressurized
Ball Tank 1	1085 gallons	84 inches		No
Ball Tank 2	500 gallons	60 inches		No
Super Drum	300 gallons		50"L x 45"W x 45"H	No
Super Flyer (Drum)	300 gallons		60"L x 39"W x 37"H	No
Helena Tank 1 (Drum)	500 gallons		73 1/4"L x 49 1/4"W x 51 3/8"H	No
Helena Tank 2 (Ball)	1000 gallons	77 inches	90 1/4"L x 77 7/8"W	No
Helena Tank 3 (Drum)	300 gallons		Maybe 72"L x 36" W	No
Helena Tank 4 (Ball)	1085 gallons	90 inches	170"L x 90"W x 106"H (w/ trailer)	No
Helena Tank 5 (Ball)	530 gallons	81 inches	120"L x 81"W x 92"H (w/ trailer)	No

You also provided a website link to safety data sheets (SDS) from several companies for "Atrazine 4L." You described this material as a typical herbicide product transported in the above-described tanks and drums. These SDS's described Atrazine 4L, depending on chemical composition, as being non-hazardous when shipped in non-bulk packages by highway, not regulated in any mode of transportation, and a possible hazardous substance if ethylene glycol in the mixture exceeds quantity of 5,000 pounds per package. The SDS also states this material is slightly toxic to fish and invertebrates, very toxic to aquatic life with long lasting effects, and as possibly meeting the definition of a marine pollutant. In addition, the SDS states Atrazine 4L is regulated as "NA 3082, Environmentally hazardous substance, liquid, n.o.s. (Atrazine), 9 (miscellaneous), Packing Group (PG) III" when transported by rail

and when transported by vessel, and as "UN 3082, Environmentally hazardous substance, liquid, n.o.s. (Atrazine), Marine Pollutant,9, PG III" when transported by aircraft. The SDS's also described Atrazine 4L as not being an Environmental Protection Agency (EPA) listed waste or as having an EPA Resource Conservation and Recovery Act characteristic.

Further, you state the containers you described also transport petroleum-derived spray-oil, agricultural crop protectants with the following product names, for which you also supplied SDS's: 440 Superior Spray Oil, Citri-Oil, Hort Oil 98-2, Ortho Volck Supreme Spray, Superior Spray Oil, Supreme Oil, and Volck Supreme Spray. You further state none of these materials you described are classified as a Department of Transportation (DOT) hazardous material. In addition, you enclosed an article entitled "Petroleum-derived spray oils: chemistry, history, refining, and formulation," written by Arthur M. Agnello, Department of Entomology, Cornell University, New York State Agricultural Experiment Station Geneva, New York 14456, for the book entitled "Spray oils beyond 2000: Sustainable pest and disease management: Proceedings of a conference held from 25 to 29 October 1999 in Sydney, New South Wales, Australia." Your questions are paraphrased and addressed below.

Q1. Are these trailer tanks considered portable tanks under the HMR?

A1. The information and photographs you supplied did not provide enough information to answer this question. However, based on the information you did provide, some of the containers appear to be permanently attached to their trailers while others do not. It is the opinion of this Office that the tanks you describe that are not permanently attached to their trailers may meet the definition of a non-DOT specification portable tank. The HMR define a portable tank in part as a bulk packaging designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means (see § 171.8). The requirements of a DOT specification portable tank are referenced in 49 CFR Part 178, Subpart H.

It is also the opinion of this Office that the tanks you describe that are permanently attached to their trailers may meet the definition of a non-DOT specification cargo tank or cargo tank motor vehicle. The HMR define a cargo tank in part as a bulk packaging intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures and is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle (see § 171.8). The requirements of a DOT specification cargo tank motor vehicle are referenced in 49 CFR Part 178, Subpart J.

Further, it is the opinion of this Office that the drums you describe are non-specification bulk packagings that must comply with 49 CFR Part 173, Subparts A and B, when used to transport hazardous materials in commerce. Materials that do not meet the definition of a hazardous material in § 171.8 are not subject to the HMR and,

therefore, are not required to be placed in HMR-authorized packagings when transported in commerce.

Q2. Are these non-DOT specification tanks suitable for the transport of liquids?

A2. As stated earlier, the information and photographs you supplied did not provide enough information to answer this question. However, the HMR require all bulk packagings that transport hazardous materials in commerce to comply with the packaging requirements in 49 CFR Part 173, Subparts A and B, and specifically § 173.24 for all packagings and § 173.24b for bulk packagings. Non-specification portable and cargo tanks must also comply with applicable HMR requirements for the materials they transport. See also § 173.5; 49 CFR Part 180, Subpart E, "Qualification and Maintenance of Cargo Tanks"; and 49 CFR Part 180, Subpart G, "Qualification and Maintenance of Portable Tanks." Please note that cargo tanks built to an American Society of Mechanical Engineers (ASME) specification not incorporated by reference in the HMR are not authorized packagings, and cannot be used to transport hazardous materials unless approved under the terms of a special permit.

Q3. If these trailer tanks are bulk packagings that do not meet Packing Group III performance standard requirements for intermediate bulk containers, can they be used to transport pesticides that are not hazardous materials?

A3. Yes. Pesticides that do not meet the definition of a hazardous material are not subject to the HMR. Therefore, the packaging provisions in our regulations do not apply.

I hope this satisfies your request.

Sincerely,



T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

**Goodall, Shante CTR (PHMSA)**

Edmonson  
173.315(m)  
Cargo Tank, House Tank  
H-0215

**From:** Ciccarone, Michael CTR (PHMSA)  
**Sent:** Tuesday, November 04, 2014 3:55 PM  
**To:** Hazmat Interps  
**Subject:** FW: Questions about tanks used in agriculture

Shante/Alice,

I don't see request in the interps database and Ms. Fitz recently called to check on its status. Can you look into this?

Thanks,

Mike

---

**From:** Ciccarone, Michael CTR (PHMSA)  
**Sent:** Wednesday, September 24, 2014 2:51 PM  
**To:** Hazmat Interps  
**Subject:** FW: Questions about tanks used in agriculture

Shante and Alice,

Please submit this for a formal letter of interpretation. Nancy spoke with Shelby and I.

Thanks,

Mike

---

**From:** Fitz, Nancy [<mailto:Fitz.Nancy@epa.gov>]  
**Sent:** Wednesday, September 24, 2014 1:35 PM  
**To:** PHMSA HM InfoCenter  
**Subject:** FW: Questions about tanks used in agriculture

Hello,

First, I would like to thank to Shelby and Mike at the Hazardous Materials Information Center for their prompt responses and helpfulness today.

Second, I would like to request a letter of interpretation regarding my questions below. My mailing address is:

Nancy Fitz  
U.S. Environmental Protection Agency  
Office of Pesticide Programs (7506P)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Please call or email if you have any questions or need additional information.

Nancy Fitz  
Office of Pesticide Programs

U.S. Environmental Protection Agency  
phone: 703-305-7385  
email: [fitz.nancy@epa.gov](mailto:fitz.nancy@epa.gov)  
web site: <http://www.epa.gov/pesticides/regulating/containers.htm>

---

**From:** Fitz, Nancy  
**Sent:** Wednesday, September 24, 2014 10:39 AM  
**To:** 'phmsa.hm-infocenter@dot.gov'  
**Subject:** Questions about tanks used in agriculture

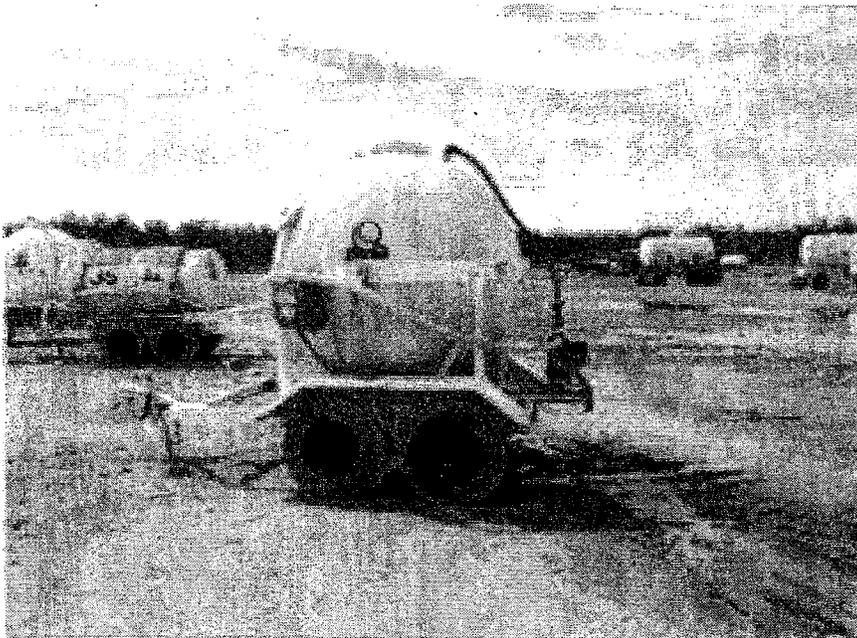
Hello,

I work for the Office of Pesticide Programs in the U.S. Environmental Protection Agency and I have several questions related to our regulations on pesticide containers.

The questions relate to the following two types of "trailer tanks" which a company wants to use to deliver pesticides to farmers. The first photo shows an example of what the company calls "ball tanks" where the ball part is plastic and the rest (white) is metal. The second photo shows an example of what the company calls "Super drums" which are all metal.

My questions are:

1. Are these "trailer tanks" considered to be portable tanks under DOT's regulations?
2. If so, are they "non-DOT Specification portable tanks suitable for the transport of liquids"?





#### Background Information

EPA has determined that these tanks are considered refillable containers under EPA's pesticide container regulations and therefore are subject to the refillable container and repackaging requirements in 40 CFR Part 165. EPA's pesticide container regulations include an exemption for transport vehicles in §165.43(h)(1) and §165.63(h)(1). However, we do not think that these "trailer tanks" fit under our definition of transport vehicle in §165.3, which is "Transport vehicle means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transport of cargo by any mode."

For pesticides that are not DOT hazardous materials, EPA's refillable container regulations require the containers to meet certain DOT packaging requirements that we refer to and adopt in our regulations. (See below for the reg text from 40 CFR 165.45(a).) The DOT regulations in 49 CFR 173.241(c), which are incorporated in EPA's container regulations, authorize the use of "non-DOT Specification portable tanks suitable for the transport of liquids." EPA's regulations also refer to and adopt the DOT packing group III requirements for nonbulk packagings and for intermediate bulk containers.

Since these "trailer tanks" are not nonbulk packagings and do not meet the packing group III requirements for intermediate bulk containers, the company would like to know if the "trailer tanks" are "non-DOT Specification portable tanks suitable for the transport of liquids" and therefore could be used to transport pesticides that are not DOT hazardous materials.

#### EPA regulatory text

##### **40 CFR 165.45 Refillable container standards.**

*(a) What Department of Transportation (DOT) standards do my refillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?*

(1) A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), Part 178, and Part 180 that are applicable to a Packing Group III material, or, if subject to a special permit,

according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(2) A refiller is not required to comply with 49 CFR 173.28(b)(2) for pesticide products that are not DOT hazardous materials if the refillable container to be reused complies with the refillable container regulations in this subpart and the refilling is done in compliance with the repackaging regulations in Subpart D of this part.

Please let me know if you have any questions or need additional information. Thank you in advance for your help.

Nancy Fitz  
Office of Pesticide Programs  
U.S. Environmental Protection Agency  
phone: 703-305-7385  
email: [fitz.nancy@epa.gov](mailto:fitz.nancy@epa.gov)  
web site: <http://www.epa.gov/pesticides/regulating/containers.htm>