



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

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

JUN 23 2009

Mr. Devon Schwalm, CHMM
Magna Corporation
39600 Lewis Drive Suite 2000
Novi, Michigan 48377

Ref. No. 08-0191R

Dear Mr. Schwalm:

This further responds to your July 22, 2008 letter requesting clarification of the hazardous substance requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you asked for guidance on determining whether an Environmental Protection Agency (EPA) hazardous waste is a DOT hazardous substance if the hazardous constituents are known and not listed in Appendix A to § 172.101.

After additional consideration of the questions in your July 22, 2008 letter and discussions with EPA staff, we are withdrawing our October 30, 2008 letter. We are replacing the interpretation provided in that letter with the following information concerning the process for determining whether an EPA hazardous waste is a hazardous substance when hazardous constituents are not listed in Appendix A to § 172.101 (“Appendix A”) for purposes of the HMR.

Appendix A, which lists materials and their associated reportable quantities (RQs), is identical to EPA’s listing of hazardous substances and RQs in 40 CFR Table 302.4. EPA lists or designates hazardous substances and assigns an RQ to the hazardous substance where applicable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA) for the purpose of reporting a release or discharge of these hazardous substances into the environment (see 42 U.S.C. 9602; 33 U.S.C. 1321). CERCLA section 306(a) also requires DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA) to list EPA hazardous substances and regulate them as hazardous materials. For purposes of the HMR, a material listed in Appendix A is regulated as a hazardous material and a hazardous substance if it meets the definition of a hazardous substance in § 171.8.

Appendix A includes materials which are listed by name and by waste stream. The waste streams, as designated by EPA, include unlisted hazardous wastes that are assigned an EPA hazardous waste number based on exhibiting any of the characteristics of a hazardous waste identified in 40 CFR 261. These characteristic hazardous wastes are designated as CERCLA hazardous substances. For example, an unlisted waste that exhibits the characteristic of ignitability is assigned the EPA hazardous waste number D001. The release of mixtures or solutions (including hazardous waste streams) of

hazardous substances is subject to EPA notification requirements in accordance with 40 CFR 302.6(b)(1). In addition to the conditions for notification of a release of a mixture and solution, EPA has advised that, for example, an unlisted hazardous waste that exhibits the characteristic of ignitability (i.e., a D001 waste) that is not otherwise listed at 40 CFR Table 302.4 is subject to notification requirements based on the 100 pound RQ for D001 waste. Your questions are paraphrased and answered as follows:

Q1. I am transporting a drum (400 lbs.) of spent isopropanol (50%) and ethanol (50%). The hazardous waste is a DOT Class 3 (flammable liquid) and is assigned EPA waste number D001 (RQ = 100 lbs.). Since the waste constituents and the concentrations are known, this hazardous material is not a hazardous substance since isopropanol and ethanol are not listed in Appendix A. Is this correct?

A1. No. Although neither isopropanol nor ethanol is listed in Appendix A, if the mixture exhibits the hazardous waste characteristic of ignitability under 40 CFR 261.21, it is a D001 waste with an RQ of 100 pounds. When the quantity of the material in the drum equals or exceeds the RQ of 100 pounds, the material is a hazardous substance for HMR purposes.

Q2. I am transporting a drum (400 lbs.) of spent isopropanol and ethanol. The hazardous waste is a DOT Class 3 (flammable liquid) and is assigned EPA waste number D001 (RQ = 100 lbs.). Since the waste constituents are known and even though the concentrations are not known, this hazardous material is not a hazardous substance since isopropanol and ethanol are not listed in Appendix A. Is this correct?

A2. See A1.

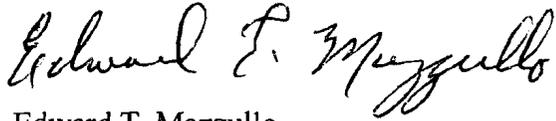
Q3. I am transporting a drum (400 lbs.) of a mixture of spent isopropanol, ethanol, and methanol. The hazardous waste is a DOT Class 3 (flammable liquid) and is assigned EPA waste numbers D001 (RQ = 100 lbs.) and F003 (RQ = 100 lbs.). Since all the waste constituents are known and even though the concentrations are not known, this hazardous material is not a hazardous substance since isopropanol and ethanol are not listed in Appendix A and the amount of methanol in the drum is less than the RQ for methanol (5,000 lbs.). Is this correct?

A3. No. Although neither isopropanol nor ethanol is listed in Appendix A and methanol is listed in Appendix A, if the hazardous material exhibits the hazardous waste characteristic of ignitability under 40 CFR 261.21, it is a D001 waste with an RQ of 100 pounds. Since none of the concentrations are known, the lowest RQ must be used to determine whether the material is a hazardous substance. When the quantity of the material in the drum equals or exceeds the RQ of 100 pounds, the material is a hazardous substance for HMR purposes. We note that according to EPA hazardous waste

requirements, a mixture of spent isopropanol, ethanol, and methanol would not be assigned EPA waste number F003.

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, reading "Edward T. Mazzullo". The signature is written in a cursive style with a large, prominent "E" and "M".

Edward T. Mazzullo
Director
Office of Hazardous Materials Standards

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Tuesday, July 22, 2008 10:00 AM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Information Center Comments/Questions

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Sallertwaite
§172.101
Applicability
08-0191R

Carolyn,
A request for a written letter of interpretation.
Thanks,
Rob

-----Original Message-----

From: devon_schwalm@magna.on.ca [mailto:devon_schwalm@magna.on.ca]
Sent: Monday, July 21, 2008 4:53 PM
To: INFOCNTR <PHMSA>
Subject: Information Center Comments/Questions

Below is the result of your feedback form. It was submitted by Devon Schwalm (devon_schwalm@magna.on.ca) on Monday, July 21, 2008 at 16:53:25.

Email: devon_schwalm@magna.on.ca

Name: Devon Schwalm

Category: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications

Organization: Magna Corporation

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State: Michigan

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Comments: Request for Letter of Interpretation:

I have been unable to find recent PHMSA guidance on determining if a EPA Hazardous Waste is a DOT Hazardous Substance for wastes being shipped by highway that do not contain any materials listed in the 49 CFR 172.101 Table 1 to Appendix A. I would also like clarification for hazardous wastes that contain listed Hazardous Substance constituents and constituents not listed on the Hazardous Substance table.

I would like written interpretation on the following three scenarios':

Scenario #1: I am transporting a drum (400 lbs.) of spent Isopropanol (50%) and Ethanoi (50%). The hazardous waste is DOT Class 3 and EPA waste code D001 (RQ=100 lbs.). Since the waste constituent and the concentration are known, this hazardous material is not a hazardous substance since Isopropanol is not listed in the Hazardous Substance Table. I this correct?

Scenario #2: I am transporting a drum (400 lbs.) of spent Isopropanol and Ethanol. The hazardous waste is DOT Class 3 and EPA waste code D001 (RQ=100 lbs.). Since all the waste constituents are known and even though the concentrations are not known, this mixture is not a Hazardous Substance since Isopropanol and Ethanol are not listed in the Hazardous

Substance Table. Is this correct?

Scenario #3: I am transporting a drum (400 lbs.) of a mixture of spent Isopropanol, Ethanol and Methanol. The hazardous waste is DOT Class 3, EPA waste code D001 (RQ=100 lbs.) and F003 (RQ= 100 lbs.). Since all the waste constituents are known and even though the concentrations are not known, this mixture is not a Hazardous Substance since Isopropanol and Ethanol are not listed in the Hazardous Substance Table and the amount of Methanol in the container is below the RQ (5,000 lbs.). Is this correct?

Please respond back with a written interpretation on these three waste shipment scenarios.

Sincerely,
Devon Schwalm, CHMM
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