



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

DEC 11 2012

Mr. Raymond Kasey
Railroad Regulatory Safety Services
7500 Masonville Drive
Falls Church, VA 22042-3520

Ref. No.: 12-0181

Dear Mr. Kasey:

This responds to your August 1, 2012 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the proper classification of a marine pollutant, in addition to carrier verification requirements.

In your letter, you state that your client, a class one and three railroad carrier, recently accepted a shipping paper for a bulk package identified as "p-Dodecylphenol" with no other description listed on the shipping paper. As an attachment, you provide a material safety data sheet (MSDS) for a product called "Lubrizol 9222R" which lists its hazardous ingredient as "p-Dodecylphenol, CAS No. 74499-35-7, Percentage (by wt.) from 1 to 4.9 percent." You further indicate that Dodecylphenol is listed in Appendix B to § 172.101 with a "PP" identifying the material as a severe marine pollutant. Your questions are paraphrased and answered below.

- Q1: You ask whether "Lubrizol 9222R," according to the attached MSDS, meets the definition of a (severe) marine pollutant? Additionally, you ask if a material is considered a listed marine pollutant if the technical name of the material does not specifically appear in the table of marine pollutants (§ 172.101, Appendix B) but a synonym does?
- A1: In accordance with § 173.22, it is the shipper's responsibility to properly classify and describe a hazardous material. This Office does not perform that function. Under the HMR, a material is considered a listed marine pollutant if either its technical name or a synonym appears in the table of marine pollutants. Furthermore, if the listed marine pollutant is in a mixture or solution, the shipper should consult the definition of a marine pollutant in § 171.8. In order to be considered a marine pollutant, the listed substance must be in a concentration of ten percent by weight, or if a severe marine pollutant, be in a concentration of one percent by weight.

Therefore, if: (1) p-Dodecylphenol is a synonym to Dodecylphenol; and (2) the concentration of Dodecylphenol in the solution is at least one percent by weight, then the answer would be yes and "Lubrizol 9222R" would appear to be a marine pollutant. However, as stated above, it is the shipper's responsibility to properly classify and describe a hazardous material.

Q2: You ask what is the required shipping name when a product shipped under a trade name is offered for transportation and contains the chemical p-Dodecylphenol in a bulk package at or above the concentration specified in Appendix B of the Hazardous Materials Table (HMT)?

A2: Please note that marine pollutants listed in Appendix B are not necessarily listed by name in the § 172.101 HMT. If a marine pollutant not listed by name or by synonym in the § 172.101 HMT meets the definition of any hazard Class 1 through 8, you must determine the class and division of the material in accordance with § 173.2a of the HMR. Furthermore, you must also select the most appropriate hazardous material description and proper shipping name.

If a marine pollutant not listed by name or by synonym in the § 172.101 HMT does not meet the definition of any Class 1 through 8, you must offer it for transportation under the most appropriate of the following two Class 9 entries: "Environmentally hazardous substances, liquid, n.o.s.," UN3082, or "Environmentally hazardous substances, solid, n.o.s." UN3077. In this specific case, it would appear that the former (along with a technical name) is the appropriate proper shipping name.

Q3: You ask whether a carrier may rely on information provided by the manufacturer (or previous offeror) and in good faith rely on that information when transporting those hazardous materials?

A3: The answer is yes. Although the HMR place primary responsibility on the shipper, or "person who offers," to properly class and communicate the hazard of a hazardous material, a carrier may be held responsible for non-compliance with applicable requirements to the extent that the carrier knows, or should have known, that a material offered for transportation is hazardous. A carrier may rely on information provided by the shipper, unless the carrier knows, or a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,



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

Railroad Regulatory Safety Services

7500 Masonville Drive
Falls Church, Virginia 22042-3520
Telephone 202-230-9563
or 703-560-0229

Nickels
\$171.1
\$172.101
\$173.22
Applicability
12-0181

August 1, 2012

Mr. Charles Betts,
Director, Standards and Rulemaking Division
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Mr. Betts:

I represent a class one and three railroad and need clarification concerning the obligations of carriers when presented with a shipping paper listing a chemical that is not readily identifiable in the hazardous materials table. Recently, carriers accepted a shipping paper for a bulk package identified as p-dodecylphenol. There was no other description listed on the shipping paper offered or accompanying the shipment. Neither "p" nor plain dodecylphenol is listed in the Haz Mat Table in 49 CFR 172.101.

I have several questions as follows.

While it is incumbent on the shipper to know what the constituents are of the product being shipped, would the requirement of 49 CFR 172.101(c)(14) apply to an "m" (meta), "o" (ortho), or "p" (para), preceding the chemical name exclude it from being a marine pollutant (MP) or further include it as well if not listed in the Appendix B along with the MP chemical?

My second question is, "when an offeror provides a carrier with a shipping description that is not readily identifiable as a regulated hazardous material, what obligation, if any, does a carrier have other than transport the bulk package from origin to destination?"

When I read further, however, I now find that according to Appendix B of the HMT, dodecylphenol is listed as a severe marine pollutant in certain concentrations, though I reiterate again that it is not listed in the HMT.

My third question is, "In the absence of an additional description on the shipping paper, which list the concentration of p-dodecylphenol, can I, as a carrier reasonably assume that the bulk package does not contain a marine pollutant and transport it in accordance with the description I received from the offeror?"

My fourth question is, "When a product shipped under a trade name is offered for transportation and contains the chemical p-dodecylphenol in a bulk package at or above the concentration

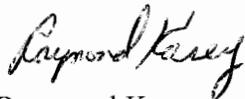
specified in Appendix B of the Hazardous Materials Table, what is the required proper shipping name if any?"

I have enclosed the MSDS for this product for your edification of the specific product to which I am referring. As you can see, the shipper offered an MSDS that indicates p-dodecylphenol as being between 1 to 4.9% by weight of the product. You will also note in your reading that block 14 lists the product as non-regulated in all countries.

My fifth question concerns a carriers' good faith determination in assessing whether a product offered by a shipper can always be accepted in good faith, just as offered, or does acceptance of any material incur other obligations not listed in the HMR?

Your assistance in this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Raymond Kasey".

Raymond Kasey

3 enclosures



Prepared according to 29CFR 1910.1200.

1	Chemical Product and Company Identification
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*The Lubrizol Corporation
29400 Lakeland Boulevard
Wickliffe, Ohio 44092
Tel: (440) 943-4200*

Product Trade Name	LUBRIZOL® 9222R
CAS Number	Not applicable for mixtures.
Synonyms	None.
Generic Chemical Name	Mixture.
Product Type	Multipurpose.
Preparation/Revision Date	25 May 2012
Transportation Emergency Phone No.	FOR TRANSPORT EMERGENCY call CHEMTREC: (+1) 703-527-3887 (outside the U.S.) 1-800-424-9300 (in the U.S.)
MSDS No.	31663020-3022415-4032271-102103

2	Hazards Identification
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Appearance	Dark brown liquid.
Odor	Mild
Principal Hazards	Warning. <ul style="list-style-type: none"> • Causes respiratory tract irritation. • Repeated swallowing of this material may cause adverse reproductive effects based on animal data. • May cause eye irritation.

See Section 11 for complete health hazard information.

3	Composition/Information on Ingredients
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Hazardous Ingredients

Comp	CAS No.	Percentage (by wt.)	Carcinogen
p-Dodecylphenol	74499-35-7	From 1 to 4.9 percent	N/E

(N/E) - None established

4	First Aid Measures
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Eyes	Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists, get medical attention.
Skin	Wash with soap and water. Get medical attention if irritation develops. Launder contaminated clothing before reuse.
Inhalation	Remove victim to fresh air and keep at rest in a position comfortable for breathing. Call a poison center or doctor.
Oral	DO NOT INDUCE VOMITING. Get immediate medical attention.
Additional Information	If exposed or concerned: Get medical attention.

5	Fire Fighting Measures
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Flash Point	164 °C, 327.2 °F PMCC (Typical)
Extinguishing Media	CO ₂ , dry chemical, or foam. Water can be used to cool and protect exposed material.
Firefighting Procedures	Recommend wearing self-contained breathing apparatus. Water may cause splattering.
Unusual Fire & Explosion Hazards	See section 10 for additional information.

6	Accidental Release Measures
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Spill Procedures	Personal Protective Equipment must be worn, see Personal Protection Section for PPE recommendations. Ventilate area if spilled in confined space or other poorly ventilated areas. Prevent entry into sewers and waterways. Pick up free liquid for
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recycle and/or disposal. Residual liquid can be absorbed on inert material.

7	Handling and Storage
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Pumping Temperature	75 °C, 167 °F
Maximum Handling Temperature	85 °C, 185 °F
Handling Procedures	Keep containers closed when not in use. Avoid breathing dust, fume, gas, mist, vapors or spray. Use only outdoors or in a well-ventilated area. Wash thoroughly after handling. Launder contaminated clothing before reuse. Empty container contains product residue which may exhibit hazards of product. Dispose of packaging or containers in accordance with local, regional, national and international regulations.
Maximum Storage Temperature	45 °C, 113 °F
Storage Procedures	Store locked up. See section 10 for incompatible materials.
Maximum Loading Temperature	Not determined.

8	Exposure Controls/Personal Protection
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Exposure Limits	None established
Other Exposure Limits	Contains mineral oil. Under conditions which may generate mists, observe the OSHA PEL of 5 mg per cubic meter, ACGIH TWA of 5 mg per cubic meter.
Engineering Controls	Use local exhaust ventilation to control mists or vapors. Additional ventilation or exhaust may be required to maintain air concentrations below recommended exposure limits.
Gloves Procedures	Use nitrile or neoprene gloves.
Eye Protection	Safety Glasses.
Respiratory Protection	Use NIOSH/MSHA approved full face respirator with a combination organic vapor and high efficiency filter cartridge if the recommended exposure limit is exceeded. Use self-contained breathing apparatus for entry into confined space, for other poorly ventilated areas and for large spill clean-up sites. Consult with an industrial hygienist to determine the appropriate respiratory protection for your specific use of this material. A respiratory protection program compliant with all applicable regulations must be followed whenever workplace conditions require the use of a respirator.
Clothing Recommendation	Gloves, coveralls, apron, boots as necessary to minimize contact. Launder contaminated clothing before reuse.

9	Physical and Chemical Properties
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Flash Point	164 °C, 327.2 °F PMCC (Typical)
Upper Flammable Limit	Not determined.
Lower Flammable Limit	Not determined.
Autoignition Point	Not determined.
Explosion Data	Material does not have explosive properties.
Vapor Pressure	Not determined.
pH	Not determined.
Specific Gravity	1.13 (15.6 °C)
Bulk Density	9.42 Lb/gal, 1.13 Kg/L
Water Solubility	Insoluble.
Percent Solid	Not determined.
Percent Volatile	Not determined.
Volatile Organic Compound	Not determined.
Vapor Density	Not determined.
Evaporation Rate	Not determined.
Odor	Mild
Appearance	Dark brown liquid.
Viscosity	22565.2 Centipoise (20 °C) 13553 Centipoise (25 °C) 5000 Centistokes (40 °C) 300 Centistokes (100 °C) 50 Centipoise (169 °C)
Odor Threshold	Not determined.
Boiling Point	Not determined.
Pour Point Temperature	-9 °C, 16 °F
Melting / Freezing Point	Not determined.

The above data are typical values and do not constitute a specification. Vapor pressure data are calculated unless otherwise noted.

10	Stability and Reactivity
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Stability	Material is normally stable at moderately elevated temperatures and pressures.
Decomposition Temperature	Not determined.

LUBRIZOL® 9222R

Incompatibility	Oxidizing agents.
Polymerization	Will not occur.
Thermal Decomposition	Smoke, carbon monoxide, carbon dioxide, aldehydes and other products of incomplete combustion. Under combustion conditions, oxides of the following elements will be formed: calcium, sulfur.
Conditions to Avoid	Not determined.

11	Toxicological Information
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– ACUTE EXPOSURE –

Eye Irritation	May cause eye irritation. Does not meet Canadian D2B or EU R36 criteria. Based on data from components or similar materials.
Skin Irritation	Not expected to be a primary skin irritant. Based on data from components or similar materials. Prolonged or repeated skin contact as from clothing wet with material may cause dermatitis. Symptoms may include redness, edema, drying, and cracking of the skin.
Respiratory Irritation	Nose, throat and lung irritant. Based on data from components or similar materials.
Dermal Toxicity	The LD50 in rabbits is > 2000 mg/Kg. Based on data from components or similar materials.
Inhalation Toxicity	No data available to indicate product or components may be a toxic inhalation hazard.
Oral Toxicity	The LD50 in rats is > 10,000 mg/Kg. Based on data from components or similar materials.
Dermal Sensitization	No data available to indicate product or components may be a skin sensitizer.
Inhalation Sensitization	No data available to indicate product or components may be respiratory sensitizers.

– CHRONIC EXPOSURE –

Chronic Toxicity	This product contains para-dodecylphenol. Rats given high, repeated daily doses of para-dodecyl phenol by oral intubation experienced effects on a number of organs including adrenal, thyroid, liver, ovary, testes, bone marrow and blood cell formation. The relevance of these effects to humans is uncertain.
Carcinogenicity	This product contains mineral oils which are considered to be severely refined and not considered to be carcinogenic under IARC. All of the oils in this product have been demonstrated to contain less than 3% extractable by the IP 346 test.
Mutagenicity	No data available to indicate product or any components present at greater than 0.1% are mutagenic or genotoxic.
Reproductive Toxicity	This product contains para-dodecylphenol. Rats given high, repeated daily doses of para-dodecyl phenol by oral intubation experienced adverse reproductive effects. The relevance of these effects to humans is uncertain.
Teratogenicity	This product contains para-dodecylphenol. Pregnant rats given high, repeated daily doses of para-dodecylphenol by oral intubation gave birth to pups with cleft palate and skeletal malformations. The relevance of these effects to humans is uncertain.

– ADDITIONAL INFORMATION –

Other	No other health hazards known.
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12	Ecological Information
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– ENVIRONMENTAL TOXICITY –

Freshwater Fish Toxicity	The acute LC50 is > 1000 mg/L based on component data.
Freshwater Invertebrates Toxicity	The acute EC50 is > 1000 mg/L based on component data. Chronic effects expected at < 1 mg/L based on component data.
Algal Inhibition	Not determined.
Saltwater Fish Toxicity	Not determined.
Saltwater Invertebrates Toxicity	Not determined.
Bacteria Toxicity	The acute EC50 is 100 - 1000 ppm based on component data.
Miscellaneous Toxicity	Not determined.

– ENVIRONMENTAL FATE –

Biodegradation	At least 25% of the components in this product show limited biodegradation based on OECD 301-type test data. At least 25% of the components in this product show moderate biodegradation based on OECD 302-type test data.
Bioaccumulation	25% or greater of the components display no potential to bioconcentrate.
Soil Mobility	Not determined.

13	Disposal Considerations
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Waste Disposal	This material, if discarded, is not a hazardous waste under RCRA Regulation 40 CFR 261. Treatment, storage, transportation, and disposal must be in accordance with applicable Federal, State/Provincial, and Local regulations.
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14	Transport Information
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ICAO/IATA I	Not regulated.
ICAO/IATA II	Not regulated.

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IMDG	Not regulated.
IMDG EMS Fire	Not applicable.
IMDG EMS Spill	Not applicable.
IMDG MFAG	Not applicable.
MARPOL Annex II	Not determined.
USCG Compatibility	Not determined.
U.S. DOT Bulk	Not regulated.
DOT NAERG	Not applicable.
U.S. DOT (Intermediate)	Not regulated.
U.S. DOT Intermediate NAERG	Not applicable.
U.S. DOT Non-Bulk	Not regulated.
U.S. DOT Non-Bulk NAERG	Not applicable.
Canada	Not regulated.
Mexico	Not regulated.
Bulk Quantity	85000 KG, 187391 lbs.
Intermediate Quantity	11000 KG, 24251 lbs.
Non-Bulk Quantity	400 KG, 882 lbs.

Review classification requirements before shipping materials at elevated temperatures.

15	Regulatory Information
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– Global Chemical Inventories –

USA	All components of this material are on the US TSCA Inventory or are exempt.
Other TSCA Reg.	None known.
EU	All components are in compliance with the EC Seventh amendment Directive 92 /32/EEC.
Japan	All components are in compliance with the Chemical Substances Control Law of Japan.
Australia	All components are in compliance with chemical notification requirements in Australia.
New Zealand	All components are in compliance with chemical notification requirements in New Zealand.
Canada	All components are in compliance with the Canadian Environmental Protection Act and are present on the Domestic Substances List.
Switzerland	All components are in compliance with the Environmentally Hazardous Substances Ordinance in Switzerland.
Korea	All components are in compliance in Korea.
Philippines	All components are in compliance with the Philippines Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 (R.A. 6969).
China	All components of this product are listed on the Inventory of Existing Chemical Substances in China.
Taiwan	All components of this product are listed on the Taiwan inventory.

– Other U.S. Federal Regulations –

SARA Ext. Haz. Subst.	This product does not contain greater than 1.0% of any chemical substance on the SARA Extremely Hazardous Substances list.								
SARA Section 313	This product does not contain greater than 1.0% (greater than 0.1% for carcinogenic substance) of any chemical substances listed under SARA Section 313.								
SARA 311 Classifications	<table border="1" style="border-collapse: collapse;"> <tr> <td style="padding: 2px;">Acute Hazard</td> <td style="padding: 2px;">Yes</td> </tr> <tr> <td style="padding: 2px;">Chronic Hazard</td> <td style="padding: 2px;">Yes</td> </tr> <tr> <td style="padding: 2px;">Fire Hazard</td> <td style="padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;">Reactivity Hazard</td> <td style="padding: 2px;">No</td> </tr> </table>	Acute Hazard	Yes	Chronic Hazard	Yes	Fire Hazard	No	Reactivity Hazard	No
Acute Hazard	Yes								
Chronic Hazard	Yes								
Fire Hazard	No								
Reactivity Hazard	No								
CERCLA Hazardous Substances	None known.								

– State Regulations –

Cal. Prop. 65	This product contains the following chemical(s) known to the state of California to cause cancer and/or birth defects based on maximum impurity levels of components: < 0.01 ppm Ethyl benzene, CAS no. 100-41-4 < 0.01 ppm Naphthalene, CAS no. 91-20-3 < 0.5 ppm cadmium < 0.5 ppm arsenic < 0.5 ppm lead
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– Product Registrations –

U.S. Fuel Registration	Not applicable.
Finnish Registration Number	Not Registered
Swedish Registration Number	Not Registered
Norwegian Registration Number	Not Registered
Danish Registration Number	Not Registered
Swiss Registration Number	Not Registered
Italian Registration Number	Not Registered

– Other / International –

LUBRIZOL® 9222R

Miscellaneous Regulatory Information

Not determined.

16	Other Information
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US NFPA Codes

Health	Fire	Reactivity	Special
2	1	0	N/E

(N/E) - None established

HMIS Codes

Health	Fire	Reactivity
2*	1	0

Precautionary Labels

Warning.

- Causes respiratory tract irritation.
- Repeated swallowing of this material may cause adverse reproductive effects based on animal data.
- May cause eye irritation.

Revision Indicators

Section: 12 Accumulation.

Changed: 25 May 2012

Section: 12 Saltwater invertebrate toxicity.

Changed: 25 May 2012

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