



U.S. Department  
of Transportation

1200 New Jersey Avenue, SE  
Washington, DC 20590

**Pipeline and Hazardous  
Materials Safety  
Administration**

April 18, 2019

Robert Miller  
Manager – Transportation Safety  
Evonik Corporation  
299 Jefferson Road  
Parsippany, NJ 07054

Reference No. 18-0147

Dear Mr. Miller:

This letter is in response to your November 8, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipment of marine pollutants.

We have paraphrased and answered your questions as follows:

- Q1. You note that § 171.23(b)(7) lists requirements for specific materials transported under the International Maritime Dangerous Goods (IMDG) Code. You add that § 171.23(b)(7) requires that, except for marine pollutants transported in accordance with the IMDG Code, marine pollutants transported in bulk packages must meet the shipping paper requirements in § 172.203(l) and the marking requirements in § 172.322. You ask the rationale for this section referring only to bulk packages and not non-bulk packages.
- A1. The provisions of § 171.23(b)(7) are intended to address marine pollutants transported in accordance with standards other than the IMDG Code authorized in Subpart C of Part 171. Therefore, a bulk package containing a marine pollutant transported in accordance with a standard other than the IMDG Code is subject to the requirements of § 172.203(l) and § 172.322. For example, a bulk package containing a marine pollutant transported in accordance with the International Civil Aviation Code (ICAO) Technical Instructions (TI) must to be marked with the MARINE POLLUTANT mark on at least two opposing sides even though is not a requirement of the ICAO TI. In addition, the provisions of § 171.23(b)(7) only contemplate bulk packages as non-bulk packages are not subject to the above requirements when transported by modes other than vessel. When all or part of transportation is by vessel, the non-bulk packages would be required to be transported in accordance with the IMDG Code or HMR.

Q2. You ask if “transported in accordance with the IMDG Code” means that a material shipped to the United States as “not regulated” due to it not being a marine pollutant under Section 2.9.3.4 of the IMDG Code is not subject to the HMR when transported under the IMDG Code.

A2. A material or solution that meets the definition of a marine pollutant in § 171.8 of the HMR but does not meet the criteria for a marine pollutant as provided in Sections 2.9.3.3 and 2.9.3.4 of the IMDG Code may be excepted from the requirements of the HMR as a marine pollutant if that exception is approved by the Pipeline and Hazardous Materials Safety Administration’s Associate Administrator for Hazardous Materials Safety (see § 172.101, appendix B, paragraph 5).

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke at the beginning and a decorative flourish at the end.

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

Andrew  
§ 171.23  
18-0197

**Dodd, Alice (PHMSA)**

---

**From:** INFOCNTR (PHMSA)  
**Sent:** Tuesday, November 13, 2018 10:44 AM  
**To:** Hazmat Interps  
**Subject:** FW: Request for Clarification on Inbound Marine Pollutants  
**Attachments:** Request for Clarification on Inbound Marine Pollutants.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Alice and Ikeya,

Attached is a request for a letter of interpretation on marine pollutants.

Thanks,

Jonathon, HMIC

**From:** Miller, Robert [mailto:robert.miller@evonik.com]  
**Sent:** Thursday, November 08, 2018 2:32 PM  
**To:** INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>  
**Cc:** Neureiter, Roland <roland.neureiter@evonik.com>  
**Subject:** Request for Clarification on Inbound Marine Pollutants

Greetings,

Attached please find a letter requesting clarification on the classification on inbound marine pollutants.

Thanks,

Rob

**Robert Miller**  
Manager - Transportation Safety

ESHQ Services North America  
Phone +1 973 929 8059  
Fax +1 973 929 8040  
Cell +1 973 202 3038  
[robert.miller@evonik.com](mailto:robert.miller@evonik.com)

**Evonik Corporation**  
7201 Hamilton Blvd.  
Allentown, PA 18195, USA  
<http://www.evonik.com>

This message and any attachments are the property of Evonik Industries and its subsidiaries, are confidential, and may be privileged or otherwise protected from disclosure. This message is intended solely for the use of the addressee. If you receive this e-mail in error, please telephone or e-mail the sender and delete this message and any attachments from your system. If you are not the intended recipient you are strictly prohibited from disclosing, copying, distributing or using any of this information.



Standards and Rulemaking Division  
Pipeline and Hazardous Materials Safety  
Administration  
Attn: PHH-10  
U.S. Department of Transportation  
East Building  
1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

November 8, 2018

**Evonik Corporation**  
299 Jefferson Road  
Parsippany, NJ 07054  
www.evonik.com  
Phone +1 973-929-8059  
Fax +1 973-929-8040  
Cell +1 973-202-3038  
Robert.miller@evonik.com

**RE: Request for Clarification on Inbound Marine Pollutants**

Dear Madam / Sir:

We are seeking guidance and interpretation regarding non-bulk marine pollutants shipped to the US.

When foreign shippers are sending material to the US, 171.23 lists requirements for specific materials and packagings transported under the IMDG Code. Specifically, 171.23(b)(7) requires that except for marine pollutants transported in accordance with the IMDG Code, marine pollutants transported in bulk packages must meet the shipping paper requirements in §172.203(l) and the package marking requirements in §172.322. This does not include marine pollutants in non-bulk packages. What is the reason and benefit for only referring to bulk packages and not non-bulk? Does this mean that marine pollutants that are not transported in accordance with the IMDG Code are not subject to 172.203(l) and 172.322?

An example would be if a material was shipped to the U.S. as "not regulated" due to it not being a marine pollutant acc. to 2.9.3.4 IMDG Code, however, being a marine pollutant according to App. B to § 172.101, when shipped to the U.S.

in non-bulk packages, 171.23(b)(7) infers this would be "not regulated" by sea and US land transportation as well because only bulk is mentioned and required to follow 172.203(l) and 172.322.

Additionally, is it possible that the underlined clause "transported in accordance with the IMDG Code" means that a material shipped to the U.S. as "not regulated" due to it not being a marine pollutant acc. to 2.9.3.4 IMDG Code is not subject to the CFR 49, as well, because it is transported in accordance with the IMDG Code, i.e. not regulated based on the provision and criteria of the IMDG Code?

Therefore, we ask for further explanation on this issue. Any guidance and interpretation would be greatly appreciated.

Thank you for your time and guidance.

Sincerely yours,



Robert Miller  
Manager - Transportation Safety  
Product Regulatory Services  
USA