



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

May 6, 2020

Mr. Adrian Medina
Logistics Coordinator
Oxyde Chemicals, Inc.
225 Pennbriht Drive
Suite 101
Houston, TX 77090

Reference No. 20-0007

Dear Mr. Medina:

This letter is in response to your January 21, 2020 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the marking of portable tanks. You state that your company purchases hazardous materials from a supplier and the supplier, in turn, hires a pre-carriage carrier to execute the surface transport portion of the movement. You state that this activity consists of picking up the empty portable tank, transporting it to the loading facility, and then, afterfilling the tank, transporting the filled portable tank to the port where it will wait for the vessel leg of the shipment to occur.

Further, you cite § 172.300(b) which states “when assigned the function by this subpart, each carrier that transports a hazardous material shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.” You also cite § 172.326(a) which states “no person may offer for transportation or transport a portable tank containing a hazardous material unless it is legibly marked on two opposing sides with the proper shipping name specified for the material in the § 172.101 table. For transportation by vessel, the minimum height for a proper shipping name marked on a portable tank is 65 mm (2.5 inches); except that portable tanks with a capacity of less than 3,000 L (792.52 gallons) may reduce the marking size to not less than 12 mm (0.47 inches).” Your questions are summarized and answered below:

Q1: You ask whether the HMR addresses who should provide the markings of the proper shipping name on portable tanks.

A1: Provided the supplier described in your letter performs all offeror and carrier functions, the supplier is responsible for ensuring the shipments conform to the requirements of the HMR. Specifically, an offeror is responsible for ensuring proper labeling and shipping papers as specified in §§ 172.200, 172.204, and 172.400; and an offeror or carrier (when assigned the function) is responsible for marking and placarding requirements (if required) in accordance with §§ 172.300 and 172.500, respectively.

Please note that if you or anyone else performs any pre-transportation functions (as defined in § 171.8) related to the shipment of the portable tanks, including securing the closure on a package, preparing a shipping paper, providing emergency response information, or certifying that a shipment is in proper condition for transportation in conformance with HMR requirements, that person is also responsible for compliance with the HMR.

Q2: You ask whether the HMR addresses who should place the markings of the proper shipping name on opposing sides of a portable tank as described in § 172.326(a).

A2: See A1.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

Andrews

20-0007



OXYDE CHEMICALS, INC.

January 21, 2020

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Kelley,

This is a request for formal clarification to determine the responsible party for marking a portable tank containing a hazardous material.

Oxyde Chemicals, Inc. is a chemical trader who is based out of Houston, TX. In our day-to-day operations, we purchase product from a supplier in Philadelphia, PA. and simultaneously hire a portable tank (Isotank) operator to export it on our behalf; they in-turn, hire a pre-carriage carrier to execute the land portion of the transport which is to pick up the empty portable tank, transport it to the loading facility, and then upon load-completion, transport it to the Ocean port where it will wait for the Main-Carriage to begin.

- a) Does the regulation address who should provide markings with the proper shipping name for portable tanks? And further,
- b) Does the regulation address who should adhere the markings with the proper shipping name onto the two opposing sides as described in §172.326, a

As defined in § 171.8, a "person who offers" or "offeror" means any person who does either or both of the following: (1) performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. Any person that is determining the hazard class of a hazardous material, selecting a packaging, filling a package, securing a closure, or marking a package to indicate that it contains a hazardous material, etc. is also considered an offeror (see § 171.1(b)).

I also read the following paragraphs in Part 172 → Subpart D; but I am still not clear in how to determine who is responsible for the above questions.

§172.300, b when assigned the function by this subpart, each carrier that transports a hazardous material shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.



OXYDE CHEMICALS, INC.

§172.326, a Shipping name. No person may offer for transportation or transport a portable tank containing a hazardous material unless it is legibly marked on two opposing sides with the proper shipping name specified for the material in the §172.101 table.

I appreciate the Department's acknowledgement in receiving this request, and thank you in advance for your interpretation. If you have any questions, please contact me at 281-874-9100 or medinaa@oxydeusa.com



Adrian Medina

Logistics Coordinator

