



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

SEP 26 2000

Mr. Roger A. Yeary
TruGreen - ChemLawn
Technical Center
135 Winter Road
Delaware, OH 43015

Dear Mr. Yeary:

This responds to your petition for rulemaking (P-1400) requesting that the criteria for Materials of Trade (MOTs) be expanded to allow up to 1880 L (500 gallons) of a diluted mixture, not to exceed 2% concentration of a Class 9 material under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In accordance with 49 CFR 106.33(c), your petition is denied.

The reasons for this denial are detailed below.

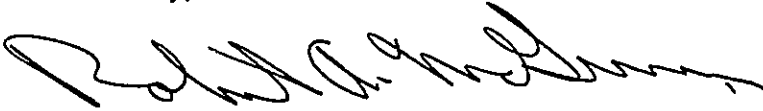
The provision authorizing the transportation of up to 400 gallons of a diluted mixture, not exceeding 2% concentration of a Class 9 material as a MOT, was added as a result of a rulemaking action under Docket HM-200 – Hazardous Materials in Intrastate Commerce. RSPA did not initially propose materials of trade exceptions for any bulk quantity of a material. Commenters to the supplemental notice of proposed rulemaking expressed concern that while a small container filled with a concentrated hazardous material may meet the criteria for a MOT, when the same amount of material was transported in an aqueous solution in a larger packaging, it would no longer qualify for the exception. As a result of these comments, RSPA agreed with the commenters and authorized a dilute mixture of a Class 9 material (up to 2 percent concentration) in a packaging having a capacity of 400 gallons or less to be transported as a MOT.

The 400-gallon limit accommodated small business practices in place at the time of the rulemaking. It limits the amount of a technically pure hazardous material contained in a bulk packaging to the same quantity as is authorized in a non-bulk packaging. An example is chlorpyrifos, a pesticide, which has a reportable quantity of one pound. As a concentrate, it would qualify as a material of trade in an eight-gallon container. However, due to its one-pound reportable quantity, when diluted with water in a 400-gallon capacity cargo tank or portable tank to the 1 or 2 percent concentration in which the product is normally applied, the tank contains a reportable quantity and is therefore a Class 9 hazardous material. You may transport quantities or concentrations of hazardous materials greater than those adopted under Docket HM-200, however, such shipments are fully subject to the HMR.

You have not provided any justification for expanding the exceptions adopted through rulemaking and we do not believe further relaxation is warranted.

If you have any questions, please contact Mr. Delmer Billings, Chief, Standards Development at 202-366-8553.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McGuire". The signature is fluid and cursive, with a large initial "R" and "M".

Robert A. McGuire
Associate Administrator for
Hazardous Materials Safety

April 27, 2000

Office of Hazardous Materials Standards
Research & Special Programs Administration
Department of Transportation
400 Seventh Avenue
Washington, DC 20590-0001

Re: 49 CFR 173.6
Materials of Trade Exceptions

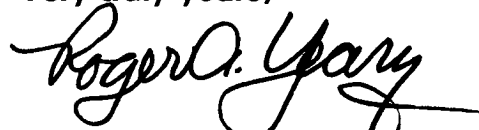
To Whom It May Concern:

TruGreen ChemLawn is a private carrier transporting Class 9 materials in support of the business of providing lawn care services. We are currently operating approximately 4,000 vehicles with cargo tanks up to 400 gallons capacity.

In order to increase efficiencies in use of our vehicles and to reduce mileage required to return to base and reload materials, we are planning a new vehicle with a cargo tank capacity of 500 gallons.

We are petitioning the Office of Hazardous Materials Standards to revise 49 CFR 173.6(a)(1)(iii) to change the capacity from 1500 L (400 gallons) to 1880 L (500 gallons) for a diluted mixture, not to exceed 2 percent concentration, of a Class 9 material.

Very truly yours,



Roger A. Yearly, DVM, DABT
Vice President - Health, Safety
& Environmental Stewardship

RAY:blf



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