



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

DEC 22 2009

Mr. Steven H. Wodka
Attorney
577 Little Silver Point Road
P.O. Box 66
Little Silver, NJ 07739-0066

Ref. No.: 09-0174

Dear Mr. Wodka:

This responds to your July 29, 2009 letter requesting clarification of the tank car marking requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You ask whether our letter of clarification dated May 16, 2008 (Ref. No.: 08-0063) to Mr. Steven Amter remains valid.

The May 16, 2008 letter was revised and is now referenced as 08-0063R. Enclosed is a copy of the revised letter. I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell".

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Enclosure



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

December 10, 2009

Mr. Steven Amter
Senior Scientist
Disposal Safety Incorporated
1001 Connecticut Avenue, NW, Suite 525
Washington, DC 20036

Reference No. 08-0063R

Dear Mr. Amter:

This letter clarifies my May 16, 2008 response and is in further reference to your March 7, 2008 letter and your March 14, 26, and April 8, 2008 telephone conversations with a member of my staff concerning a tank car that contains ortho-Toluidine (o-Toluidine). You asked if a warning label or sign may be placed near the tank car's unloading outlet under the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180). You stated the image of the sign or label had not been determined, but would likely take the shape of a circle, square, or rectangle.

Ortho-toluidine is listed as "UN1708, Toluidines, 6.1, PG II," in the Hazardous Materials Table, § 172.101 in the HMR. The material is also listed as o-Toluidine in Table 1 to Appendix A in § 172.101 and is regulated as a hazardous substance, as defined in § 171.8, when the quantity of o-Toluidine in one package equals or exceeds its reportable quantity (RQ) value of 100 pounds. If the quantity of material being transported in one package meets or exceeds the RQ for o-Toluidine, the letters "RQ" must be included either before or after the basic description on the shipping paper. When transported in a tank car, the tank must be marked on each side and each end with the identification number "1708" in accordance with §§ 172.330(a)(1)(i) and 172.332.

Provided the proposed sign or label by its color, design, shape, or content cannot be confused with and does not conflict with a marking, label or placard prescribed in the HMR, the placement of a label or sign near a tank car's unloading outlet is not prohibited under the DOT regulations. See the requirements in §§ 172.304(a)(4), 172.401(b), and 172.502(a)(2). A sign or label on a tank car must also comply with the tank car marking requirements in Appendix C of the Association of American Railroads Specifications for Tank Cars, which the HMR incorporates by reference in § 171.7. See § 179.22(a). The purpose of this latter requirement is to ensure that all tank car markings, including those required under the HMR, are placed in a location that is consistent with the markings on other tank cars. This consistency makes it easier for railroad and emergency response personnel to identify a tank car in transport.

Although you submitted the proposed text of the label in your inquiry, this Office assessed the content of the label only to determine whether it would conflict with labeling requirements under the HMR. Thus, our May 16, 2008 letter is in no way an endorsement, ratification, or confirmation of the truth of the statements on your label. Moreover, PHMSA does not have the authority or the expertise to determine whether a material is a cancer-causing agent, and no such determination was intended by our letter.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hattie L. Mitchell', with a long horizontal flourish extending to the right.

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Member of Bar
New Jersey
District of Columbia

STEVEN H. WODKA
ATTORNEY AT LAW
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Marking Labeling
09-0174
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July 29, 2009
BY FEDEX

Mr. Edward T. Mazzullo, Director
Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
East Building, 2nd Floor
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: PHMSA Interpretation #08-0063

Dear Mr. Mazzullo:

I represent the United Steelworkers Local Union 277 which is the authorized employee representative for the hourly workers at The Goodyear Tire & Rubber Company in Niagara Falls, New York.

The Goodyear plant in Niagara Falls is one of the largest users of the chemical product ortho-toluidine. The plant currently consumes more than 5,500,000 pounds of ortho-toluidine each year, nearly all of which is shipped in a fleet of railroad tank cars by its manufacturer, the First Chemical Corporation, a division of E.I. DuPont de Nemours & Company, in Pascagoula, Mississippi.

Ortho-toluidine has been categorized by the International Agency for Research on Cancer (IARC) as a Group 1 agent which is carcinogenic to humans. In a study published in 1991 in the Journal of the National Cancer Institute, researchers from the National Institute for Occupational Safety and Health (NIOSH) reported that the incidence of bladder cancer at the Goodyear plant was more than three times the expected rate. NIOSH reported that the likely cause of the excess bladder cancer risk was due to occupational exposure to ortho-toluidine. Among workers who were assigned for over ten years to the department where ortho-toluidine was used, their risk of bladder cancer was 27 times the expected rate.

On May 16, 2008, your agency issued PHMSA Interpretation #08-0063 (attached) in response to an inquiry as to whether a tank car warning label, which clearly and prominently warned of the carcinogenic hazard of ortho-toluidine, and which provided important instructions for its safe handling, would conflict with any DOT regulation or standard. My client was pleased to see Ms. Mitchell's response, on behalf of the agency that, provided that the proposed warning label did not interfere with the other

required tank car markings, such a label could be placed near a tank car's unloading outlet.

However, at some point subsequent to May 16, 2008, without any notice, this PHMSA response letter was removed from the public side of the PHMSA interpretations website. On July 24, 2009, I spoke with "Jackie" of your office who advised that the response letter is still listed on the "internal" agency side of the website and that there is no indication that the response letter has been cancelled.

My client is greatly about the circumstances of the withdrawal of this interpretation from the public side of the website. At a recent deposition, attorneys for DuPont, the manufacturer of the ortho-toluidine, implied that the response letter is no longer valid. DuPont denies that ortho-toluidine can cause bladder cancer in human beings. DuPont also refuses to place a cancer warning on the exterior of their ortho-toluidine tank cars.

Accordingly, we request that the agency advise us as to:

1. Whether PHMSA Interpretation #08-0063 is still valid?
2. If PHMSA Interpretation #08-0063 is valid, when will it be restored to the public side of the agency's website?
3. If PHMSA Interpretation #08-0063 is no longer valid, what are the grounds, if any, for the agency's decision?

If you have any questions, please let me know. We would appreciate receiving your response as soon as possible.

Sincerely yours,



Steven H. Wodka
Attorney for USW Local 277

enc.

cc: Robert Dutton, President USW Local 277