



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

OCT 18 2012

Ms. Cyndi Fink
Distribution Safety Manager
Industrial and Environmental Affairs
LANXESS Corporation
111 RIDC Park West Drive
Pittsburgh, PA 15275

Reference No. 12-0169

Dear Ms. Fink:

This is in response to your August 1, 2012 letter requesting clarification on how to apply the exception in § 171.4(c) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to a marine pollutant shipment described as “UN 3077, Environmentally hazardous substance, solid, n.o.s., 9 (miscellaneous), PG III” in non-bulk packagings. You state this material is transported in a freight container that is imported into a United States port by vessel under one shipping paper and to its eventual destination by motor vehicle under another shipping paper. We have paraphrased your questions and answered them in the order you provided.

- Q1. Since the original vessel shipping paper terminates at the port, is the material still considered a Class 9 material for the portion of its transportation between the port and the final destination (e.g., our warehouse or a customer)?
- A1. Provided the material meets the definition of no other hazard class under the HMR and is not a hazardous substance or a hazardous waste, a marine pollutant material that is transported in the United States in non-bulk packages in a manner in which no portion of its transportation occurs by vessel is no longer regulated as a Class 9 material under the HMR (see § 171.4(c)).
- Q2. Should the shipping paper for the land portion of the material’s transportation indicate that the material is still regulated?
- A2. The answer is no. See A1.
- Q3. Does the termination of the vessel shipping paper and subsequent issuing of a new land shipping paper have any bearing on how § 171.4(c) is applied?

- A3. The answer is yes. Under § 171.1(c), the transportation of a hazardous material begins when it is offered for shipment to the carrier and the carrier takes possession of the package that contains the material. Transportation of the material ends when the package is delivered to the final destination indicated on the shipping document, package marking, or other medium, the carrier relinquishes possession of the package, and the carrier is no longer responsible for performing functions subject to the HMR for that particular package. In the example you provided, the final destination indicated on the first shipping paper is the United States port. Therefore, from the time the packages of marine pollutant enter United States territorial waters until they are delivered to the port stated on the shipping paper and the carrier relinquishes possession, the shipment must comply with all applicable requirements prescribed for marine pollutants under the HMR.
- Q4. What is the final destination of this material—is it the port or is it the location of our customer or warehouse?
- A4. Based on the information you provided in your example, the final destination of the material described in the first shipping paper is the designated port; the final destination of the material described in the second shipping paper is the customer or warehouse.

I hope this satisfies your request.

Sincerely,



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

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

Edmonson
§ 171.4(c)
Marine Pollutants
Exceptions
12-0169

Subject: Request for Letter of Interpretation
Re: 49 CFR 171.4(c)

Dear Mr. Betts:

I am seeking a Letter of Interpretation to clarify 49 CFR 171.4(c) regarding import by vessel and subsequent land transport of UN 3077, Class 9, PG III, Environmentally Hazardous Substance, Solid, which is considered a marine pollutant.

Our material is shipped via vessel container in non-bulk packages, and arrives at the designated port. At the port, the sealed containers are transferred to a vehicle and transported to our warehouse or customer location for delivery and/or storage.

During vessel transport, the containers, individual packages, and paperwork use the proper hazardous material designation of UN 3077/Class 9/PG III/Marine Pollutant per IMDG code. Upon arrival at the port, the original vessel bill of lading is terminated, and the material is turned over to a freight forwarding service for transport to our warehouse or customer location. A new land bill of lading is issued for this subsequent transport from the port.

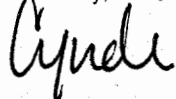
The original vessel bill indicates the "shipper" as the non-US manufacturing location, "consignee" as our US-based corporate headquarters, with the port as final destination for vessel bill. The land bill indicates the "shipper" as our freight forwarding service at the port, and the "consignee" as our US-based warehouse location or customer (final destination for land bill).

171.4(c) indicates that the non-bulk material is still covered by the HMR because part of its journey was via vessel. Since we terminate the original vessel bill of lading at the port, is the material still considered a regulated Class 9 material for its transfer between the port and the final destination (warehouse or customer)? Should the new land bill of lading indicate the material is still regulated? Does the termination of the vessel bill and subsequent issuing of a new land bill have any bearing on how 171.4(c) is applied?

To further clarify, what is the "final destination" of this material? Since the ocean bill is terminated at the port when the material is turned over to our freight forwarding agent, is the port the final destination? Or is the final destination at our customer or warehouse? Per the US DOT Maritime Administration *Glossary of Shipping Terms* (May 2008), one definition of "Destination" is "the place where a carrier actually turns over cargo to a consignee or his agent." Therefore, I believe the "final destination" to be the location where the shipper provides the cargo to our agent, i.e., the port is the final destination per the vessel bill of lading. Do you concur?

Any assistance you can provide in clarifying these rules would be appreciated. Thank you in advance.

Sincerely,



Cyndi Fink
Distribution Safety Manager

August 1, 2012

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