



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

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

FEB - 2 2001

Mr. David Littlejohn
Technical Advisor
Corporate Safety, Health
& Fire Prevention
FedEx Express
P.O. Box 727
Memphis, TN 38194-7622

Ref. No. 00-0209

Dear Mr. Littlejohn:

This responds to your letter asking whether a material may be properly described as "Environmentally hazardous substance, liquid, n.o.s., 9" or "Environmentally hazardous substance, solid, n.o.s., 9" (with the inclusion of a technical name in parentheses) if a reportable quantity is not present.

The answer is "yes." The proper shipping name "Environmentally hazardous substance . . ." may be used for any Class 9 material that is not more appropriately described by another shipping name. Examples of Class 9 materials that may be described in this manner are hazardous substances, marine pollutants, and hazardous wastes. Because the letter "G" appears before the entries "Environmentally hazardous substance, liquid, n.o.s." and "Environmentally hazardous substance, solid, n.o.s." in column 1 of the Hazardous Materials Table, "one or more technical names must be entered in parentheses, in association with the basic shipping description," 49 CFR § 172.101(b)(4), subject to the exceptions in § 172.203(k)(2). The proper shipping name "Environmentally hazardous substance . . ." may properly describe a material that does not meet the definition in 49 CFR § 171.8 of a "hazardous substance" (a material "listed in Appendix A to § 172.101 . . . [i]n a quantity, in one package, which equals or exceeds the reportable quantity (RQ) . . .").

Therefore, the description of "Environmentally hazardous substance, liquid, n.o.s., 9" or "Environmentally hazardous substance, solid, n.o.s., 9" (with the inclusion of a technical name in parentheses) does not necessarily indicate to a carrier that a reportable quantity is present. However, we cannot agree with your assumption that it is never possible for a carrier to know whether a reportable quantity of a hazardous substance is present. As RSPA's Chief Counsel stated in her interpretation published in the Federal Register on June 4, 1998, "a carrier may not ignore readily apparent facts that indicate that . . . a shipment declared to contain a hazardous material is not properly . . . marked . . . and described on a shipping paper." 63 Fed. Reg. 30411, 30412.

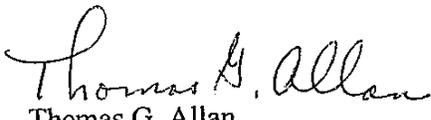


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We agree that the offeror is primarily responsible for determining the proper shipping name of a material and, in the case of "n.o.s." and other generic descriptions, the appropriate technical name(s) to be entered on the shipping paper in parentheses in association with the basic shipping description. 49 CFR. § 172.203(k). At the same time, whenever a carrier "has reason to know of discrepancies, the carrier may not simply rely on the shipper's certification." Id.

I hope this information is helpful.

Sincerely,

Handwritten signature of Thomas G. Allan in cursive script.

Thomas G. Allan

Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

Enclosure



July 25, 2000

Mr. Edward T. Mazzullo, Director
U.S. Dept. of Transportation
Research and Special Projects Administration
Office of Hazardous Materials Standards
400 7th Street, S.W.
Washington, D.C. 20590

RE: Request For Clarification or Interpretation

Dear Mr. Mazzullo:

FedEx Express would like clarification on whether a shipper may utilize the proper shipping names Environmentally hazardous substance, liquid, n.o.s. and Environmentally hazardous substance, solid, n.o.s. including a technical name without that substance meeting the definition of a reportable quantity. There does not appear to be any restrictions that would prohibit a shipper from offering a shipment declared with this description.

In addition, please verify that proper shipping names/technical names that meet the definition of an RQ can only be determined by the shipper. A carrier cannot possibly know the concentration by weight of a product and whether it meets the definition of an RQ amount. A carrier can only verify that if an RQ is listed in association with the proper shipping name on the declaration, it must be marked as well on the external package.

Thank you in advance for your review of this letter and if I can provide any further information please do not hesitate to contact me directly.

Regards,

David Littlejohn

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Corporate Safety, Health
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Mr. Littlejohn - Safety, Health & Fire Prevention