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August 14, 1997

Ms. J. Suzanne Hedgepeth  
Chief, Exemptions Branch (DHM-31)  
Office of Hazardous Materials  
Exemptions and Approvals  
Hazardous Materials Safety  
Department of Transportation  
Washington, D.C. 20590-0001

Dear Ms. Hedgepeth:

## NEW EXEMPTION APPLICATION

### Request for Priority Processing

On behalf of **DowEianco** and pursuant to the provisions of 49 CFR 107.105, this is to request a priority exemption made necessary by the fact that although 49 CFR § 173.40 does not apply to Class 2.3 gaseous PIH materials of Hazard Zone B in cylinders, the rules would seem to require that non-pressurized, Class 6.1 PIH Hazard Zone B liquids nevertheless be subject to the additional provisions of § 173.40. This seems to be inconsistent.

Therefore, we are requesting authorization to make shipments of a Division 6.1, liquid PIH material meeting Hazard Zone B, in DOT specification 4BW cylinders authorized under § 173.227 (as referenced by § 173.226), but that do not meet the general packaging provisions for liquid poisonous materials in cylinders required under § 173.40. The packaging requirements under § 173.40 become applicable in that, the packaging authorization under § 173.227(a), states, "packagings as authorized in § 173.226." Section § 173.226, being prescribed for PIH Hazard Zone A materials, authorizes "specification cylinders as authorized in § 173.40." One would assume that only PIH Zone A materials are subject to § 173.40, but because cylinders authorized for Zone B liquid materials are also cross referenced by § 173.226, it appears that they also become subject to § 173.40.

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If a similar Division 6.1, liquid PIH material meeting Hazard Zone B, were shipped pressurized with nitrogen, for example, the material would become a PIH, Division 2.3 (poison gas) Hazard Zone B. The packaging reference then becomes § 173.302, however, paragraph (h) of that section, only requires a material meeting Hazard Zone A to comply with § 173.40. There is no reference in § 173.302 that requires a Division 2.3, PIH material meeting Hazard Zone B, to comply with § 173.40; only a Hazard Zone A material must comply. Because DOT does not prescribe the requirements found in § 173.40, for a material meeting Division 2.3, Hazard Zone B, it is not clear why DOT would impose the stricter requirements under § 173.40 on a Division 6.1, Hazard Zone B liquid material which is clearly less hazardous (according to DOT's hazard class precedence) than a Division 2.3 poison gas. The rulemaking record would seem to indicate an unintentional discrepancy in the regulations, and thus, we are requesting a waiver from § 173.227, in so far as it references § 173.40.

Because we believe from discussions that DOT recognizes the discrepancy in the regulations and that there is no safety issue regarding shipments of a 6.1, Hazard Zone B liquid material, we would also request that the marking requirements under §§ 172.203(a) and 172.301(c) be waived so that shipping papers and cylinders do not have to be marked with the DOT exemption number. Requiring the DOT exemption mark to be displayed on shipping papers and cylinders would penalize the shipper by subjecting him to additional requirements that are not prescribed for a more hazardous material and would provide no added safety factor. In fact, such markings could be interpreted to mean that the shipment may be more hazardous than a PIH gas shipment, when under the DOT regulations, it is not considered as such, especially when the packages being used are identical to those used for Hazard Zone B gaseous material. We note that DOT has waived these marking requirements in other exemptions where there are no safety issues involved, such as, DOT-E 11690.

1. **Applicant:** DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268, telephone: (317) 337-4419. Please direct any questions concerning this application to the writer at the address and telephone number listed above.

2. **Request for Priority Processing:** It is hereby requested that this application be processed on a priority basis in order to prevent serious economic loss not only to the applicant, but also to parties who are dependent on shipments of this product in order to meet agricultural deadlines. Also, from the product stewardship perspective, DowElanco is seriously concerned that certain risk factors are increased when end-users are forced to unload pressurized cylinders containing a PIH material. From a safety standpoint, it is obviously less hazardous for customers in the field who utilize the containers, to unload a PIH liquid from a non-pressurized container.

The requested priority exemption is necessitated by the fact that the applicant will be forced to redesign 4BW cylinder closures that meet all applicable DOT requirements except for those in

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§ 173.40. In preparation for the new planting season, thousands of cylinders would require significant adjustments resulting in an increased cost per unit of approximately \$70 to \$250, depending on the specific type. The increased cost to the applicant is not justified in relation to the level of safety cylinders will afford when deemed to be in compliance with § 173.40, in view of the fact that DOT authorizes a more hazardous material, a Division 2.3, PIH, Hazard Zone B material in 4BW cylinders that are not required to comply with § 173.40. Also, if the exemption is not given priority treatment, DOT would in essence, be forcing the applicant to ship a pressurized material that then becomes a poison gas, but is not subject to the cylinder requirements for shipments of poison materials under 173.40. As such, cylinders meeting current 4BW specifications, except for 173.40, would be authorized for a Hazard Zone B poison gas, but not for a Hazard Zone B poison liquid.

**3. Description of Packaging:** Packages that meet all applicable requirements for DOT specification 4BW cylinders.

**4. Regulation Affected:** 49 CFR Sections 172.203(a), 172.302(c) and 173.227, in so far as its reference to § 173.40.

**5. Hazardous Materials Description (49 CFR 172.101):** Toxic liquids, flammable, organic, n.o.s. (chloropicrin, dichloropropene), 6.1, UN2929, PG I, PIH, Zone B.

**6. Modes of transportation authorized:** Motor vehicle.

**7. Duration of exemption:** It is requested that this exemption be issued for a renewable, two-year term.

**8. Special provisions:** The following provisions are proposed for incorporation into the requested exemption.

a) Offerors for transportation of the hazardous materials specified in this exemption may use the packaging described for the transportation of such hazardous materials provided no modifications or changes are made to the packages and a copy of the exemption is maintained at each facility from which such offering occurs.

b) The marking requirements in 49 CFR Sections 172.203(a) and 172.302(c) are waived.

**9. Level of Safety:** DowElanco believes that the exemption requested herein is justified in that the packaging and safety control measures proposed above will achieve a level of safety in transport at least equivalent to that afforded by the regulations for other PIH Zone B materials.

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**10. Summary:** On the basis of the foregoing, DowElanco submits that grant of the exemption requested herein will achieve a level of safety equivalent to that afforded by the regulations from which exemption is sought, and in fact, will provide an even higher level of safety in that shipments of the PIH material will not be required to be pressurized and therefore, customers of DowElanco will not be forced to handle a material classified as a poison gas. At the same time, the applicant notes that if the requested exemption is not issued on a priority basis, it will have serious economic effects, in that DowElanco will be forced to equip its cylinders with significantly more expensive valves. DowElanco submits that such costs would be unwarranted in light of the level of safety that would be achieved in transport under the conditions proposed in this application.

Please contact the undersigned directly if you have questions concerning this request, or require any additional information in order to process this application.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon Rousseau", with a long horizontal flourish extending to the right.

Gordon Rousseau