

54612

RSPTA-99-5122-3

**EXEMPTION EVALUATION FORM**  
(Revised as of April 24, 1996)

**PART I APPLICANT**

1A. Application Number: 33646

Exemption Number : 12215

Project Officer : George Cushmac

1B. Date of Application: 02/16/1999

1C. Name of Applicant: Gwendolyn Jordan

Title: Env. Regulatory Manager

Company Name: BIO-TEK Industries, Inc.

Address: P.O. Box 93746  
1380 West Marietta St.  
Atlanta, GA 30318

Phone Number: 404-799-2050 (Fax: 404-799-2056)

1D. U.S. Agent for foreign applicant or Consultant Name:

Name: N/A

Company name:

Address:

Phone Number:

1F. Summary of What Applicant is Requesting:

To authorize transportation in commerce of BIO-TEK Industries' product TEK-TROL Disinfectant Cleaner Concentrate, which is shipped under the description of Flammable liquids, corrosive, n.o.s., 3, UN2924, PG III, limited quantity (EPAREg. NO 11725-7) in 1-gallon size capacity or less (limited quantities), as a non-hazardous material.

1G. Regulation(s) exempted: 49 CFR 173.120 and 173.136.

1H. Modes of Transportation:

1 MV (xx)    2 RF( )    3 CV ( )    4 CGAIR ( )    5 PSAIR ( )

**PART II REVIEW FOR DOCKETING**

(XX) Application contains sufficient information to support docketing.

( ) Application is incomplete and should be returned for the following reason(s).

DEPT. OF TRANSPORTATION  
DOCKETS  
99 MAY -4 PM 11:11

**PART III HAZARDOUS MATERIALS**

3A. Hazardous Materials to be shipped:

Hazardous materials description -- proper shipping name	Hazard Class/ Division	Idenifi- cation Number	Packing Group
Not applicable, if the exemption is granted.			

3B. Is the hazardous material capable of being detonated? No.

If so, under what conditions?

(1) What special precautions have been taken to prevent these conditions in transportation?

(2) Has the hazardous material been classed as an explosive?

Has it been tested and approved under § 173.56?

Is stabilization required and what type?

3c. Is the hazardous material listed in the Hazardous Materials Table § 172.101? No.

If it is not listed has sufficient information been supplied in order to determine the hazard class? Yes.

3D. Other risks presented by the material that warrant special assessment. (ex: flammable or toxic gases produced upon contact with water) None.

**PART IV PACKAGING**

4A. Is the applicant seeking an exemption from the packaging requirements? No. (if no - go to Part V)

4B. What type of exemption is the applicant seeking?

- \_\_\_ - Non authorized specification package.
- \_\_\_ - Authorized Specification package with quantity variation.
- \_\_\_ - Over authorized pressure.
- \_\_\_ - Non specification package. Most comparable spec. package. \_\_\_\_\_

4c. Is the material of construction appropriate? \_\_\_\_\_

Will the packaging integrity be sufficient?

In the case of a pressurized packaging, will the package adequately contain any pressure that might develop?

Have evaluation of tests shown the package to be equivalent?

4D. What special handling measures needed (specify)?

#### PART V SPECIAL TRANSPORT AND INFORMATIONAL CONTROLS

5A. Is the applicant seeking an exemption from Special Transport and Informational Controls? Yes. (if no - go to Part VI.)

5B. Indicate control from which variance is sought. (i.e., placarding requirements, etc.) The Hazardous Materials Regulations (49 CFR Parts 171 to 180).

#### PART VI SHIPPING EXPERIENCE

6A. Satisfactory shipping experience: Yes.  
or

6B. New package with no shipping experience: No.

6C. Explanation if 6A and 6B are both 'Yes' or both 'No':

#### PART VII DOCKET COMMENTS/INFORMATION

7A. Date checked: 03/16/99

7B. Comments (summarized): None.

7c. Has **CONFIDENTIAL** or **PROPRIETARY** information (49CFR 107.5) been considered in this application? Yes.

Note: [**\*\*** All statements made in PART VII which are based on proprietary or confidential material submitted by the applicant must be contained in brackets and preceded and followed by asterisks - e.g. as is this statement. **\*\***]

PART VIII OVERALL EVALUATION & RECOMMENDATION

The application for emergency exemption is based on significant economic loss/potential economic loss by BIO-TEK Industries, Inc. related to their product TEK-TROL Disinfectant Cleaner Concentrate (TEK-TROL). In accordance with the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 to 180), TEK-TROL meets the definition of both the flammable liquid and corrosive material hazard classes at the packing group III level (49 CFR 173.120, 173.121, 173.136 and 173.137, respectively). TEK-TROL is classed as flammable liquid, with a subsidiary corrosive hazard (173.2a(b)). BIO-TEK Industries ships TEK-TROL to many customers via United Parcel Service (UPS). UPS has imposed a surcharge on packages that are subject to the HMR. Surcharges imposed by UPS to transport hazardous materials are the cause of BIO-TEK Industries economic loss; not the HMR. The HMR specify minimum conditions and constraints for the safe transportation of hazardous materials. However, carriers may establish internal policies and practices regarding the types and quantities of hazardous materials they accept for transportation. The terms of transportation concerning rates, frequency of service, and the like, are business decisions that are outside the scope of our authority to regulate.

Documentation in the application supports the position that TEK-TROL is subject to the HMR. The applicant has not presented a case for an equivalent level of safety that would support shipment/transport of TEK-TROL as a non-hazardous material.

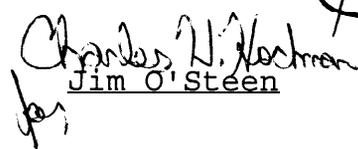
For the above reasons, the application for exemption is denied.

Office of Hazardous Materials Technolow (OHMT)

Assigned to Health & Safety, DHM-21.2

Project Officer George Cushma  Date March 15, 1999

Team Leader George Cushma  Date March 17, 1999

Office Director  Jim O'Steen Date March 25, 1999