

## REGULATORY UPDATE – April 2012

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### **HEALTH & SAFETY UPDATES**

No Health & Safety Updates for the month of April.

### **MISCELLANEOUS UPDATES**

No Miscellaneous Updates for the month of April.

**A. EPA Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas; Final Determination to Deny Administrative Petition**

On April 13, 2012, the Environmental Protection Agency (EPA) published a final determination (77 FR 22226-22229) denying an administrative petition submitted by Earthjustice to review the final rule, “Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas.”

**Summary**

Earthjustice on behalf of the Sierra Club and the Louisiana Environmental Action Network submitted an administrative petition to EPA to review this final rule. EPA has reviewed the petition along with the information contained in the rulemaking docket and the five public comments received on a tentative denial published on January 28, 2011 (76 FR 5107). After evaluating this information EPA has issued a final denial of the petition in a letter to Earthjustice dated April 3, 2012.

**Link**

The link below will allow you to view/print the final determination to deny the administrative petition.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-13/pdf/2012-8921.pdf>

**B. EPA Hazardous Waste Technical Corrections and Clarifications Rule; Final Rule**

On April 13, 2012, EPA published a final rule (77 FR 22229-22232) amending a typographical error in the “K107” entry and a change to make recycling facilities aware of Land Disposal Restriction certification and notification requirements.

**Background**

On March 18, 2010, EPA published a direct final rule, “Hazardous Waste Technical Corrections and Clarifications Rule” (75 FR 12989) that included several technical amendments to the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. In the direct final rule EPA stated that if they received adverse comment on the amendments they would not take effect. EPA received adverse comment on six of the amendments and withdrew the direct final rule for these amendments on June 4, 2010 (75 FR 31716).

The six amendments that were withdrawn were:

- 40 CFR 262.34(a) – the hazardous waste accumulation time for large quantity generators;
- 40 CFR 262.34(a)(2) – the date upon which each period of accumulation begins and must be clearly marked and visible for inspection on each container and tank;

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- 40 CFR 262.34(a)(5) - the closure requirements for tanks, containers, drip pads, and containment buildings;
- 40 CFR 262.34(a)(1)(iv)(B) – the closure requirements for tanks, containers, drip pads and containment buildings;
- 40 CFR 266.20(b) - recyclable materials used in a manner constituting disposal; and
- 40 CFR 261.32(a) - the entry for hazardous waste number K107.

In this final rule EPA makes corrections to the last two amendments listed above.

**Summary**

Correction to 40 CFR 261.32(a)

In the March 18, 2010, direct final rule EPA attempted to correct the spelling of “carboxylic acid hydrazines” in the entry for K107. However, the word “acid” was not included in the name correction. In this final rule EPA includes the correct spelling for “carboxylic acid hydrazines” in the K107 entry in 40 CFR 261.32(a).

Conforming Change to 40 CFR 266.20(b)

The final rule adds a reference in 40 CFR 266.20(b) alerting recyclers to the land disposal restriction (LDR) certification requirements in 40 CFR 268.7(b)(6) that includes specific requirements for use constituting disposal activities. This reference was not included in previous publications of the regulations.

**Effective Date**

These amendments will become effective on May 14, 2012.

**Link**

The link below will allow you to view/print this final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-13/pdf/2012-8924.pdf>

**C. EPA Electronic Reporting Under the Toxic Substances Control Act; Proposed Rule**

On April 17, 2012, EPA published a proposed rule (77 FR 22707-22719) that would require electronic reporting of information that must be submitted under the Toxic Substances Control Act (TSCA) in sections 4, 8(a), and 8(d). In addition, EPA is proposing to amend TSCA section 5 reporting requirements to require electronic reporting for Notices of Commencement of Manufacture or Import (NOC).

### Summary

EPA is proposing electronic reporting of information submitted under the following TSCA sections:

1. TSCA Section 4 Test Rules and Enforceable Consent Agreements (ECAs)

The documents included in section 4 include:

- a. Letters of Intent to Conduct Testing
- b. Extension Requests
- c. Modification Requests
- d. Exemption Requests
- e. Hearing Requests
- f. Data Required to be Developed under 40 CFR Part 799
- g. Documents and Correspondence Related to ECAs

2. TSCA Section 8(a) – Preliminary Assessment Information Rule (PAIR)

Form 7710-35 - Manufacturer's Report – Preliminary Assessment Information

3. TSCA Section 8(d)

1. Health and Safety Data Reporting Rule – 40 CFR 716
2. Dibenzo-para-dioxins/Dibenzofurans Rule – 40 CFR 766
3. Submission of Underlying Data
4. Preliminary Reports of Ongoing Studies
5. Requests for Extension of Time
6. Requests for Withdrawal of a Chemical Substance

4. TSCA Section 5

EPA proposes to amend the regulations in 40 CFR Parts 720, 721, 723, and 725 to require Notices of Commencement of Manufacture or Import (NOCs) and support documents for TSCA Section 5 notices.

### Comments Due

Comments on this proposed rule must be submitted to EPA on or before June 18, 2012.

### Link

The link below will allow you to view/print this proposed rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-17/pdf/2012-8937.pdf>

**D. EPA Change of Address for Region 4, State and Local Agencies; Technical Correction; Final Rule**

On April 19, 2012, EPA published a Final Rule (77 FR 23396-23399) amending the address for EPA's Region 4 office along with the State Agencies for Georgia, Mississippi, North Carolina, and local agencies for Forsyth County, Mecklenburg County Land Use and Environmental Services Agency and Western North Carolina Regional Air Quality Agency.

**Summary**

This final rule amends the address for EPA's Region 4 office along with state and local agencies in 40 CFR Parts 52, 60, and 61.

1. EPA Region 4

Director, Air, Pesticides and Toxics Management Division  
U.S. Environmental Protection Agency  
61 Forsyth St. SW, Suite 9T43  
Atlanta, GA 3030-8960

2. Georgia Department of Natural Resources  
Environmental Protection Division  
Air Protection Branch  
4244 International Parkway, Suite 120  
Atlanta, GA 30354

3. Mississippi Department of Environmental Quality  
Office of Pollution Control, Air Division  
P.O. Box 2261  
Jackson, MS 39225

4. North Carolina Department of Environment and Natural Resources  
Division of Air Quality  
1641 Mail Service Center  
Raleigh, NC 27699-1641

5. Forsyth County Environmental Affairs  
201 North Chestnut Street  
Winston-Salem, NC 27101

6. Mecklenburg County Land Use and Environmental Services Agency  
Air Quality  
700 N. Tryon Street, Suite 205  
Charlotte, NC 28202-2236

7. Western North Carolina Regional Air Quality Agency  
49 Mount Carmel Road  
Asheville, NC 28806

**Effective Date**

These new addresses became effective on April 19, 2012.

**Link**

The link below will allow you to view/print this final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-19/pdf/2012-9234.pdf>

**E. Colorado Electronic Recycling Jobs Act Bans Electronic Wastes from Landfill**

On April 20, 2012, Colorado Governor John Hickenlooper signed the Electronic Recycling Jobs Act (S.B. 133) prohibiting the disposal of electronic devices in a landfills. The landfill ban applies to computers, computer peripherals, fax machines, printers, digital video disc players, videocassette recorders, and other electronic devices.

**Effective Date**

The ban on the disposal of electronics in landfills takes effect on July 1, 2013.

**Link**

The link below will allow you to view/print the Electronic Recycling Jobs Act (S.B. 133).

[http://www.leg.state.co.us/clics/clics2012a/csl.nsf/billcontainers/BE40677619E5656187257981007F374C/\\$FILE/133\\_01.pdf](http://www.leg.state.co.us/clics/clics2012a/csl.nsf/billcontainers/BE40677619E5656187257981007F374C/$FILE/133_01.pdf)

**F. DOT/PHMSA Hazardous Materials; Miscellaneous Amendments (RRR); Notice of Proposed Rulemaking**

On April 26, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (77 FR 24885-24907) that includes miscellaneous amendments to the Hazardous Materials Regulations to update and clarify certain regulatory requirements.

**Summary**

The proposed amendments were identified through a review of the Hazardous Materials Regulations (HMR) and previously-issued letters of interpretation. In addition, this notice of

proposed rulemaking (NPRM) proposes to incorporate a widely-held special permit with a long standing history of safety into the HMR and respond to a petition for rulemaking.

Proposed changes that could directly affect Veolia's operations include the following:

1. Residue Last Containing

PHMSA is proposing to revise 49 CFR 172.203(e)(1) and (e)(2) to permit the shipping paper for a packaging or tank car containing the residue of a hazardous material to include the words, "RESIDUE: LAST CONTAINED \*\*\*" either before or after the basic shipping description of the hazardous material last contained in the packaging. 49 CFR 172.203(e)(1) remains optional with the word "may." For rail shipments of tank cars, 49 CFR 172.203(e)(2) is being revised to require the residue statement either before or after the basic shipping description, or immediately preceding the proper shipping name. The current regulation restricts the residue statement to only appear before the basic description.

2. Training Records

Proposes to revise the recordkeeping requirements in 49 CFR 704 to specify that a hazardous materials (hazmat) employer must make hazmat employee training records available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or Department of Homeland Security.

3. Temperature Sensitive Materials in Lab Packs

PHMSA is proposing to clarify 49 CFR 173.12(b) to require temperature controlled materials contained in lab packs to also conform with the temperature sensitive handling requirements under 49 CFR 173.21(f)(1). (i.e., Veolia's RCG Temperature Sensitive Materials Procedure)

4. Packaging for Non-Spillable Batteries

In previous rulemakings, PHMSA inadvertently required that excepted non-spillable batteries be securely packaged in strong outer packagings. This modification prohibited excepted batteries from being palletized or placed on a skid.

In this NPRM, PHMSA is proposing to revise 49 CFR 173.159(c)(1) to except from the packaging requirements of 49 CFR 173.159, non-spillable batteries that are secured to skids or pallets and capable of withstanding the shocks normally incident to transportation, provided the batteries meet the requirements of 49 CFR 173.159(a) and are loaded or braced so as to prevent damage and short circuits in transit. Further, any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries.

5. Notification Requirements for Packages Containing Residue

PHMSA is proposing to incorporate clarification provided through a letter of interpretation by revising 49 CFR 178.2(c) to indicate that the (closure) notification requirements apply to packagings containing a residue of hazardous materials unless these packagings of hazardous materials meet the exceptions for empty packagings provided in 49 CFR 173.29(b). This clarification will ensure packages containing residues are properly closed and increase compliance with the intent of the regulation. This increased compliance should also result in fewer packages being improperly closed, and thereby reduce the potential for leaks in transportation. This requirement does not apply to cargo tank motor vehicles (CTMVs) that require a manufacturer's date report and certificate to be maintained by the owner of the CTMV stating that the completed CTMV conforms in all respects to the appropriate specification of the ASME Code.

6. Hazardous Material Table and Special Provisions

Proposes the following revisions to the Hazardous Material Table (HMT) and Special Provisions (SP) listings:

- a. Corrects errors in the transportation requirements for entries listed under the proper shipping name, Hydrazine Dicarboxylic Acid Diazide
- b. Removes the entry for Zinc Ethyl, see Diethylzinc
- c. Removes the reference to special provisions B72 and B74 which have already been removed from 49 CFR 172.102

7. Other

Other proposed changes in this NPRM are:

- a. Clarification that the materials of trade exception in 49 CFR 173.6 may be used when transporting Division 2.1 and 2.2 gases in Dewar flasks.
- b. Incorporates DOT-SP 13556 into 49 CFR 173.134 authorizing the transportation by motor vehicle of certain regulated medical wastes, designated as sharps, in non-DOT specification containers fitted into wheeled racks. These sharps may be transported on a vehicle used exclusively to transport regulated medical waste.

**Comments Due**

Comments on this notice of proposed rulemaking must be received by PHMSA by June 25, 2012.

**Link**

The link below will allow you to view/print this notice of proposed rulemaking.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-26/pdf/2012-9895.pdf>



**G. DOT/PHMSA Hazardous Materials; Packages Intended for Transport by Aircraft; Final Rule**

On April 16, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (77 FR 22504-22509) amending the Hazardous Materials Regulations to require closures of inner packagings containing liquids within a combination packaging intended for transportation by aircraft to be secured by a secondary means or include a leakproof liner.

**Summary**

Following are the modifications to the packaging requirements for PG I, II, and III liquids for transportation by aircraft:

1. PG I Liquids

PG I liquids must be contained in an inner packaging with a secondary means of closure (e.g., adhesive tape, friction sleeves, welding or soldering, locking wires, locking rings, induction heat seals and child-resistant closures) that is further packaged in a rigid leakproof receptacle or intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging before being placed in its outer package.

2. PG II and III Liquids

A leakproof liner may be used where a secondary closure cannot be applied or it is impractical to apply. The use of a leakproof liner, bag, or other form of secondary containment will satisfy the secondary means of closure requirement for PH II and III liquids.

**Effective Date**

This final rule becomes effective on July 1, 2012, but voluntary compliance is authorized beginning on May 16, 2012.

**Link**

The link below will allow you to view/print this final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-16/pdf/2012-8978.pdf>

**H. DOT/FMCSA Amendment to Agency Rules of Practice; Final Rule**

On April 26, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (77 FR 24863-24872) amending the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials proceedings.

### **Summary**

This final rule clarifies that paying the full proposed civil penalty in an enforcement proceeding, either in response to a Notice of Claim (NOC) or later in the proceeding, does not allow respondents to unilaterally avoid an admission of liability for the violations charged. Additionally, this final rule establishes procedures for issuing out-of-service orders to motor carriers, intermodal equipment providers, brokers, and freight forwarders if determines are reincarnations of other entities with a history of failing to comply with statutory or regulatory requirements. These procedures provide for an administrative review before the out-of-service order takes effect. Finally, FMCSA has established a process for consolidating Agency records of reincarnated companies with their predecessor entities.

### **Effective Date**

This final rule will become effective on May 29, 2012.

### **Link**

The link below will allow you to view/print this final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-26/pdf/2012-10162.pdf>

## **I. DOT/PHMSA Hazardous Materials: Transportation of Lithium Batteries; Notice of Proposed Rulemaking**

On April 11, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking and request for additional comment (77 FR 21714-21716) seeking comment on the impact of changes to the requirements for the air transport of lithium cells and batteries that have been adopted into the 2013-2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air (ICAO Technical Instructions).

### **Summary**

On January 11, 2010, PHMSA published a notice of proposed rulemaking (NPRM) to amend the requirements in the Hazardous Materials Regulations (HMR) for the transportation of lithium cell batteries, including lithium cells and batteries packed with or contained in equipment. Some of the proposed amendments in the NPRM were intended to harmonize provisions in the HMR with provisions in the ICAO Technical Instructions.

Since the publication of the NPRM, there have been several changes to the ICAO standards for the air transport of lithium cells and batteries. PHMSA is now considering harmonizing the HMR with the lithium battery provisions recently adopted by ICAO which become effective on January 1, 2013.

PHMSA is seeking comment on the impact of these changes should they be adopted into the HMR.

**Comments Due**

Comments must be received by PHMSA by May 11, 2012.

**Link**

The link below will allow you to view the notice of proposed rulemaking and request for comments.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-11/pdf/2012-8550.pdf>

**J. DOT/FMCSA Proposed Recommendations on Obstructive Sleep Apnea; Notice and Request for Public Comment and Withdrawal of Notice**

On April 20, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice and request for comment (77 FR 23794-23797) proposing recommendations from the Motor Carrier Safety Advisory Committee (MCSAC) and the Medical Review Board (MRB) on Obstructive Sleep Apnea (OSA) and the medical certification of commercial motor vehicle (CMV) drivers. However, one week later, on April 27, 2012, FMCSA published a withdrawal of this notice (77 FR 25226-25227).

**Summary**

Currently, FMCSA relies on medical examiners to apply professional judgment in applying FMCSA's advisory criteria to OSA to determine whether a driver has a respiratory dysfunction such as OSA that may affect his or her ability to operate a CMV safely. The motor carrier community and medical examiners requested that FMCSA improve the existing advisory criteria and provide more uniform regulatory guidance on OSA to the motor carrier industry and medical examiners.

In response to this request, the MCSAC, MRB, and FMCSA advisory committees deliberated and provided finalized recommendations on OSA to FMCSA on February 6, 2012. FMCSA proposed to adopt the recommendations as regulatory guidance after reviewing and evaluating comments received from the public in the notice published on April 20, 2012.

However, FMCSA withdrew the notice on April 27, 2012, stating that the initial publication of the proposal was a clerical error and that they are still in the process of reviewing the recommendations submitted by the MCSAC and MRB. FMCSA anticipates requesting public comment on these recommendations later this year.

**Links**

The link below will allow you to view/print the notice and request for comment.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-20/pdf/2012-9555.pdf>

The link below will allow you to view/print the withdrawal of the notice.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-27/pdf/2012-10176.pdf>