

REGULATORY UPDATE – February 2013

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No Health and Safety Updates for February 2013.

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A. EPA Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials that are Solid Waste; Final Rule

On February 7, 2013, the Environmental Protection Agency (EPA) published a final rule (78 FR 9111-9213) amending the “Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units” (CISWI rule) and the “Non-Hazardous Secondary Materials Rule” (NHSM rule).

CISWI Background

Section 129 of the Clean Air Act (CAA) requires EPA to develop and adopt standards for commercial and industrial solid waste incineration units pursuant to CAA sections 111 and 129. On March 21, 2011, EPA published the CISWI final rule to amend the 2000 CISWI rule. Due to EPA and court actions the March 2011 rules were never published in the Federal Register. The publication of this final rule establishes standards for new and existing CISWI units.

CISWI Summary

This final rule establishes revised numeric emission limits for new and existing CISWI units for certain of the nine pollutants listed in 40 CFR 129(a)(4). EPA also, further subcategorized energy recovery units (ERUs) and subcategorized waste-burning kilns based on design type differences. Therefore, this final rule includes three subcategories of ERUs and separate carbon monoxide (CO) limits for two subcategories of waste-burning kilns. The final rule also establishes stack testing and continuous monitoring requirements along with monitoring, recordkeeping, and reporting requirements.

NHSM Background

EPA published a proposed rule (75 FR 31844) on June 4, 2010, proposing a definition of non-hazardous solid waste to be used to identify whether non-hazardous secondary materials burned as fuels or as ingredients in combustion units are solid wastes. The meaning of “solid waste” as defined under the Resource Conservation and Recovery Act (RCRA) is important because it determines whether a combustion unit is required to meet emission standards for solid waste incineration units under CAA section 129 or emission standards for commercial, industrial, and institutional boilers under CAA section 112. CAA section 129 states the term “solid waste” shall have the meaning “established by the Administrator pursuant to (RCRA).”

On March 11, 2011, EPA published a final rule (76 FR 15456) identifying which non-hazardous secondary materials when used as fuels or ingredients in combustion units are “solid wastes” under RCRA. EPA received numerous questions and concerns from the regulated industry regarding the requirements and the implementation of the requirements in the final rule. On December 23, 2011, EPA published a proposed rule (76 FR 80452) to clarify and amend several provisions of the NHSM final rule.

Summary

This final rule amends the March 21, 2011, NHSM final rule and provides standards and procedures for identifying whether non-hazardous secondary materials are solid wastes under RCRA when used as fuels or ingredients in combustion units.

1. Non-Waste Determinations for Specific Non-Hazardous Secondary Materials Used as Fuels

EPA has determined that the following materials are considered non-waste fuels and that generators and burners of NHSM as fuels will not be required to evaluate the materials using the self-implementing legitimacy criteria when the materials are burned as a fuel.

a. Scrap Tires

Scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires (including factory scraps).

b. Resinated Wood

c. Coal Refuse

Coal refuse that has been recovered from legacy piles and processed in the same manner as currently-generated coal refuse.

d. Pulp and Paper Sludge

Dewatered pulp and paper sludges that are not discarded and are generated and burned on-site by pulp and paper mills that burn a significant portion of such materials where dewatered residuals are managed in a manner that preserves the meaningful heating value of the materials.

2. Contaminant Legitimacy Criterion for NHSM Used as Fuels

The non-hazardous material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which the combustion unit is designed to burn. Facilities comparing NHSM and traditional fuels now have the ability to utilize the following comparisons:

- a. The ability to compare groups of contaminants where technically reasonable;
- b. The clarification that “designed to burn” means can burn or does burn, and not necessarily permitted to burn;
- c. The ability to use traditional fuel data from national surveys and other sources beyond a facility’s current fuel supplier; and
- d. The ability to use ranges of traditional fuel contaminant levels when making contaminant comparisons.

3. Streamlining the Non-Waste Determination Petition Process

EPA streamlined the non-waste determination provisions in 40 CFR 241.3(c). The public participation process was also revised to accommodate petitions that apply to multiple combustors.

Effective Date

The Non-Hazardous Secondary Materials rule will become effective on April 8, 2013.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-07/pdf/2012-31632.pdf>

B. EPA Announcement of Requirements Gathering Meetings for the Electronic Manifest (e-Manifest) System; Notice of Public Meetings

On February 20, 2013, EPA published a notice of public meetings (78 FR 11877-11879) to discuss and obtain public input on a national electronic manifest system (e-Manifest) that will capture information regarding the shipment of hazardous wastes.

Summary

EPA is currently in the initial planning phase of the development of the e-Manifest system. The e-Manifest system must be in place by 2015. To assist EPA in the development of the e-Manifest system, EPA has scheduled three public meetings to allow the public to obtain input from the States, industry, communities, and other stakeholders on their needs and the IT system requirements for the e-Manifest system. Topics that will be included in the public meetings include:

1. E-Manifest workflow, including mobile field component and handler submission;
2. E-Manifest business rule processing;
3. Electronic signature and Cross-Media Electronic Reporting Regulation conformance;
4. Paper manifest processing;
5. Data access and reporting;
6. State data consumption and interaction;
7. Data Quality Assurance; and
8. User administration and security.

Public Meeting Dates and Locations

February 25-26, 2013: Arlington, VA, EPA Headquarters

March 14-15, 2013: Chicago, IL, EPA Region 5

March 21-22, 2013: Denver, CO, EPA Region 8

Link

The link below will allow you to view/print this notice of public meetings.

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-20/pdf/2013-03838.pdf>

C. EPA Declaration of Prion as a Pest under FIFRA; Related Amendments and Availability of Final Test Guidelines; Final Rule

On February 28, 2013, EPA published a final rule (78 FR 13501-13507) declaring a prion (i.e., proteinaceous infectious particle) to be a “pest” under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) amending the regulations to expressly include prion with the regulatory definition of pest.

Background

Prions may occur in the central nervous system tissues of animals as an abnormal, infectious form of prion protein. Abnormal conformations of prion proteins are generally called prions. Different types of prions are commonly designated by the types of diseases they produce (e.g., scrapie or bovine spongiform encephalopathy – mad cow disease). In the disease process, prions recruit normal prion proteins and convert them into prions. When this process occurs in the brain, it causes a disease that slowly progresses from neuronal dysfunction and degeneration to death. EPA is concerned that animal-related prions may spread to other animals or to humans because these diseases are always fatal in humans and animals, and there are no known treatments or cures.

Summary

In this final rule EPA has declared that a prion is a “pest” under FIFRA and has amended the regulations to expressly include prion with the regulatory definition of pest. Since a prion is considered to be a pest, any product intended to reduce the infectivity of a prion on inanimate surfaces is considered to be a pesticide. Any company wishing to distribute or sell a product regulated under FIFRA must obtain a registration prior to distribution of the product. The declaration of a prion as a pest ensures that prion-related products are regulated under FIFRA.

This final rule also amends the product performance data requirements to include that efficacy data is required for all products with prion-related claims. The product performance data requirements have been amended to specifically identify the efficacy data that are required for products with prion-related claims. The final test guidelines are also available for the generation of product performance data for prion-related products.

Effective Date

This final rule will become effective on April 29, 2013.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-28/pdf/2013-04613.pdf>

D. EPA National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Final Rule

On February 12, 2013, EPA published a final rule (78 FR 10005-10054) amending the national emission standards for hazardous air pollutants for the Portland cement industry.

Summary

In this final rule, EPA is amending the National Emission Standards for Hazardous Air Pollutants (NESHAP) and the New Source Performance Standards for Portland cement plants. These amendments are in response to petitions for reconsideration filed by the Portland cement industry and to a decision by the U.S. District of Columbia (D.C.) Court of Appeals.

The amendments in this final rule include:

1. The particulate matter (PM) standards in the NESHAP require manual stack testing for compliance determination (continuous emission monitoring is not required) and requires that a parametric operating level be established using a PM continuous parametric monitoring system.
2. The emission standards during startup and shutdown have been amended from numerical standards to work practice standards.

POLLUTANT EXISTING AND NEW SOURCE STANDARDS

Pollutant	Existing Source Standard	New Source Standard
Mercury	55 lb/MM tons clinker	21 lb/MM tons clinker
THC	24 ppmvd	24 ppmvd
PM	0.07 lb/ton clinker (3-run test average)	0.02 lb/ton clinker (3-run test average)
HCl	3 ppmvd	3 ppmvd
Organic HAP (alternative to Total Hydrocarbons)	12 ppmvd	12 ppmvd

Compliance Dates

The compliance date is September 9, 2015 for existing sources standards for PM, Mercury, HCl and THC.

New source standards apply to all sources that commenced construction or reconstruction after May 6, 2009.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-12/pdf/2012-31633.pdf>

E. DOT/FMCSA Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Notice of Public Listening Session

On February 28, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of a public listening session (78 FR 13607-13609) to solicit ideas and information on entry-level training for drivers of commercial motor vehicles (CMVs).

Summary

The Moving Ahead for Progress in the 21st Century Act (MAP-21) requires FMCSA to issue final entry-level driver training (ELDT) regulations establishing minimum ELDT requirements for operators of CMVs by October 1, 2013. In this public listening session, FMCSA is seeking input on factors, issues, and data it should consider in the creation of the ELDT regulations.

Date and Location of the Public Listening Session

The public listening session will be held on March 22, 2013 at the Kentucky Exposition Center in Louisville, KY.

Link

The link below will allow you to view/print this notice of a public listening session.

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-28/pdf/2013-04487.pdf>

**F. NRC Notice of Forthcoming Workshop to Discuss Revisions to NUREG/BR-0204, Rev. 2
“Instructions for Completing NRC’s Uniform Low-Level Waste Manifest;” Notice of Public
Workshop**

On February 20, 2013, the Nuclear Regulatory Commission (NRC) published a notice of a public workshop (78 FR 11907-11909) to discuss possible revisions to NUREG/BT-0204, Rev. 2 “Instructions for Completing NRC’s Uniform Low-Level Radioactive Waste Manifest.”

Summary

10 CFR Part 20, Appendix G, “Requirements for Transfers of Low-Level Radioactive Waste (LLRW) Intended for Disposal at Licensed Land Disposal Facilities and Manifests” requires that an NRC Uniform Waste Manifest be prepared for LLRW intended for ultimate disposal at a licensed LLRW land disposal facility. The shipper of the waste must include on the uniform manifest, “the activity of each of the radionuclides Tritium, Carbon-14, Technecium-99, and Iodine-129 contained in the shipment.” NRC regulated disposal facilities have recommended that NRC review the reporting of these isotopes because they believe the information included on the uniform manifests is being over reported due to a reliance on the use of a default value when completing the manifest. The over reporting would result in an over-estimation of site inventory which may cause disposal sites to close prematurely due to an over-estimation of the site inventory dose assessment.

In addition, the State of Texas requires Waste Control Specialists (WCS) to record the quantity of Chlorine-36 because it is a key contributor to the groundwater dose at the WCS facility.

At this public workshop NRC is interested in receiving information on the issues associated with the reporting of the above listed radionuclides on LLRW manifests.

Date and Location of Public Workshop

The public workshop was held on March 1, 2013 at the Sheraton Downtown Phoenix in Phoenix, AZ.

Link

The link below will allow you to view/print this notice of a public workshop.

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-20/pdf/2013-03850.pdf>