

REGULATORY UPDATE –March 2013

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A. EPA Proposed Revisions to the Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes; Guidance Manual

On March 1, 2013, the Environmental Protection Agency (EPA) announced through an e-mail to approximately 750 individuals that a draft revised version of the “Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes” guidance manual (WAP Guidance Manual) was available for review and comment.

Summary

The WAP Guidance Manual was last updated by EPA in 1994. The guidance manual was developed to provide guidance on how to develop and implement a Waste Analysis Plan (WAP) for managing hazardous wastes in accordance with the Resource Conservation and Recovery Act (RCRA), assist federal and state permit writers in evaluating WAPs, and to assist enforcement personnel in determining whether a facility is in compliance with testing requirements.

EPA staff personnel have spent the past year and a half revising the WAP Guidance Manual. EPA believes that the revised WAP Guidance Manual will clarify the follow issues:

1. The design of waste characterization studies;
2. The frequency of recharacterization;
3. How facilities can address issues of waste variability;
4. How to select indicator parameters to reduce testing costs;
5. How to establish data quality objectives;
6. How to address uncertainty in measurements; and
7. How to use statistical concepts to guide the waste characterization process.

Comments Due

Comments on the proposed revisions to the WAP Guidance Manual must be submitted to EPA by April 30, 2013.

Link

The link below will allow you to view/print the revised WAP Guidance Manual.

<http://www.epa.gov/epawaste/hazard/tsd/permit/tsd-regs/tsdf-wap-guide.pdf>

B. EPA Acetonitrile; Community Right-to-Know Toxic Chemical Release Reporting; Denial of Petition

On March 5, 2013, EPA published a denial of a petition (78 FR 14241-14245) to remove acetonitrile from the list of chemicals subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313.

Background

EPCRA Section 313 requires facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases, other waste management quantities, pollution prevention activities, and recycling data for these chemicals annually.

On February 4, 1998, EPA received a petition from BP Chemicals Inc. (BP) and GNI Chemicals Corporation (GNICC) to delete acetonitrile from the EPCRA Section 313 list of toxic/reportable chemicals. On March 5, 1999, EPA denied the petition based on a determination that acetonitrile meets the listing criteria due to its potential to cause neurotoxicity and death in humans and its contribution to the formation of ozone in the environment.

On June 28, 2002, BP submitted a second petition to EPA to delete acetonitrile from the list of EPCRA Section 313 toxic/reportable chemicals. In the petition, BP argues that acetonitrile meets all of the conditions for delisting.

Summary

EPA is denying the petition to delete acetonitrile from the EPCRA Section 313 list of toxic/reportable chemicals. EPA's denial is based on their conclusion that acetonitrile can reasonably be anticipated to cause serious or irreversible chronic health effects in human beings. Therefore, acetonitrile will remain on the EPCRA Section 313 list of toxic chemicals and be subject to the annual reporting requirements.

Link

The link below will allow you to view/print EPA's denial of BP's petition.

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-05/pdf/2013-04933.pdf>

C. Sierra Club Files Notice of Intent to Reactivate its Challenge to EPA's Definition of Solid Waste Rule

On March 8, 2013, the Sierra Club filed a notice of intent with the U.S. Court of Appeals for the District of Columbia to reactivate its challenge to the Definition of Solid Waste final rule.

Summary

In January 2009, the Sierra Club filed an administrative petition requesting that EPA reconsider and repeal the Definition of Solid Waste Rule. In a September 2010 settlement agreement, EPA agreed to review the Definition of Solid Waste Rule and to promulgate a final rule by December 31, 2012. On December 3, 2012, EPA notified the Sierra Club that they would not be able to complete the rulemaking by the December 31, 2012 deadline and requested a four month extension of the deadline. The Sierra Club has subsequently contacted EPA numerous times in an

effort to determine EPA's timeline for completing the revisions to the Definition of Solid Waste Rule. EPA has been unable to provide the Sierra Club with a timeline. This prompted the Sierra Club to submit the notice of intent to reactivate the challenge to the Definition of Solid Waste final rule.

D. Connecticut Mandatory Mercury Thermostat Recycling Began on April 1, 2013

On April 1, 2013, a Connecticut Law (Bill Number SB-205) became effective requiring all mercury thermometers removed from service by HVAC contractors to be recycled. The law also requires HVAC wholesale distributors in Connecticut to act as a collection point for waste mercury thermostats. There is no cost to consumers for this recycling program.

Link

The link below will allow you to view/print Bill Number SB-205.

<http://www.cga.ct.gov/2012/sum/2012SUM00054-R02SB-00350-SUM.htm>

E. DOT/PHMSA Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR); Final Rule

On March 7, 2013, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (78 FR 14702-14716) amending the Hazardous Materials Regulations in response to petitions for rulemaking submitted by the regulated community to update, clarify, or provide relief from miscellaneous regulatory requirements.

Summary

The following are some of the more notable revisions to the Hazardous Materials Regulations:

1. The recordkeeping and package marking requirements for third-party labs and manufacturers are revised to assure the traceability of packaging.
2. The listing for "Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA 1203" is removed from the Hazardous Materials Table (HMT).
3. A limited quantity exception is added for Division 4.1 Self-reactive solids and Self-reactive liquids Types B through F.
4. A revision to allow Smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material is added to relax regulatory requirements for these materials without compromising safety.
5. A provision is added to provide greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides "on or near the vessel's bridge" while the vessel is in a US port.

Of these changes adopted in this final rule, those that may impact Veolia's operations include the following:

1. Non-Temperature Controlled Self-Reactive Solid and Liquid Types B-F as Limited Quantities

In this final rule PHMSA is adopting requirements to authorize all eligible self-reactive liquid and solid material as limited quantities in accordance with the type and quantity of substances authorized in the UN Model Regulations. PHMSA authorizes Types B through F non-temperature controlled liquid and solid self-reactive materials as limited quantities by amending the listings in the HMT for Self-reactive solids and Self-reactive liquids, Types B through F, to add reference in column 8(a) in the HMT to 49 CFR 173.151 to allow limited quantities of these materials to be excepted from labeling and placarding requirements as long as the materials meet the provisions of 49 CFR 173.151.

2. Reclassification of Smokeless Powder, Division 1.4C to Division 4.1 Material

PHMSA is amending 49 CFR 173.171 to allow previously examined and approved Division 1.4C smokeless powder to be reclassified as a Class 4.1 material for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to certain conditions.

Effective Date

These amendments become effective on May 6, 2013, but voluntary compliance is allowed beginning on the date of publication of the final rule, March 7, 2013.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-07/pdf/2013-04197.pdf>

F. DOT/PHMSA Hazardous Materials: Miscellaneous Amendments (RRR); Final Rule

On March 11, 2013, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (78 FR 15303-15331) amending the Hazardous Materials Regulations to update and clarify existing regulatory requirements.

Summary

PHMSA believes these amendments promote safer transportation practices, eliminate unnecessary regulatory requirements, address a petition for rulemaking, incorporate a special permit into the Hazardous Materials Regulations (HMR), facilitate international commerce, and simplify the regulations.

Regulatory changes that may directly affect Veolia's operations include the following:

1. Residue Last Contained

PHMSA is revising 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.

For shipments other than rail shipments of tank cars, 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 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

PHMSA is revising the recordkeeping requirements in 49 CFR 172.704 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 of an entity explicitly granted authority to enforce the HMR.

3. Temperature Sensitive Materials in Lab Packs

PHMSA is revising 49 CFR 173.12(b)(3) to clarify that temperature controlled materials contained in lab packs must 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 final rule, PHMSA is revising 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. Hazardous Materials Table and Special Provisions

PHMSA is adopting revisions into the Hazardous Materials Table and Special Provisions, including:

- a. Correcting errors in the transportation requirements for entries listed under the proper shipping name, Hydrazine Dicarboxylic Acid Diazide
- b. Removing the entry for Zinc Ethyl, see Diethylzinc
- c. Revising Special Provision 138 to clarify the lead solubility calculation utilized for classification of a material as a Marine Pollutant
- d. Removing the reference to Special Provisions B72 and B74 which have already been removed from 49 CFR 172.102
- e. Adding entries for Paint related material, flammable, corrosive (*including paint thinning or reducing compound*), UN3469, PG II and III

6. Other Changes

Other changes adopted in this final rule include:

- 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. Incorporate DOT-SP 13556 into 49 CFR 173.134 to authorize 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.

Effective Date

These amendments become effective on May 10, 2013, but voluntary compliance is allowed beginning on the date of publication, March 11, 2013.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04198.pdf>

G. DOT/FMCSA Commercial Driver's License Testing and Commercial Learner's Permit Standards; Final Rule

On March 25, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCA) published a final rule (78 FR 17875-12882) amending the May 9, 2011 Commercial Driver's License Testing and Commercial Learner's Permit Standards Final Rule.

Background

On May 9, 2011, FMCSA published a final rule (76 FR 26854) amending the commercial driver's license knowledge and skills testing standards and establishing new minimum Federal Standards for States issuing the Commercial Learner's Permit (CLP). FMCSA received 34 petitions for reconsideration covering a wide range of issues. FMCSA has granted or denied each of the 34 petitions. This final rule addresses only the seven petitions that were granted.

Summary

In this final rule, FMCSA has modified the following provisions, which are granted in whole or in part:

1. State Procedures – 49 CFR 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5)

FMCSA has amended these sections to clarify that the exception to check for legal presence and domicile covers all transactions, whether initial issuance, transfer, renewal, or upgrade, made after July 8, 2011.

2. Requiring Two Employees to Verify Documents – 49 CFR 383.73(m)

FMCSA amended 49 CFR 383.73(m) to clarify that FMCSA requires two people to be substantively involved in the license issuance, but does not require that two people verify each document.

3. Prohibiting Training Schools from Administering Skills Tests – 49 CFR 383.75(a)(7)

49 CFR 383.75(a)(7) has been amended to provide that CDL training schools may test their own student applicants only so long as an individual examiner does not administer the skills test to drivers he or she has trained.

4. Bonding Requirements – 49 CFR 383.75(a)(8)(v)

The bonding requirement under 49 CFR 383.75(a)(8)(v) has been eliminated for governmental entities.

5. Prohibiting States from Using a Photo of the CLP – 49 CFR 383.153(b)(1) and 385.227

FMCSA has amended 49 CFR 383.153(b)(1) and 384.227 to make the reference to a digital color image or photograph or black and white laser engraved photograph of the driver permissive rather than prohibited.

6. Requiring Annual Background Checks for Skills Test Examiners – 49 CFR 384.228(h)

This section has been amended to require States to perform background checks on test examiners only at the time of hire.

7. Substantial Compliance – General Requirements – 49 CFR 384.301(f)

FMCSA has extended the compliance date for States to be in substantial compliance with the provisions of the May 2011 and this final rule by one year to July 8, 2015.

Compliance Date

States must be in substantial compliance with the amendments in this final rule by July 8, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-25/pdf/2013-06760.pdf>

H. NRC Physical Protection of Byproduct Material; Final Rule

On March 19, 2013, the Nuclear Regulatory Commission (NRC) published a final rule (78 FR 16921-17022) amending regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material.

Summary

These final rules are intended to provide reasonable assurance of preventing the theft or diversion of risk-significant radioactive materials. These requirements provide the NRC with reasonable assurance that public health and safety and the common defense and security continue to be adequately protected.

This final rule promulgates generically applicable security requirements for licensees possessing category 1 and 2 quantities of radioactive materials. New requirements for background investigations and an access authorization program are included to ensure that individuals who have access to these materials have gone through background investigations and are determined to be trustworthy and reliable. New requirements are also included to establish physical protection systems to detect, assess, and respond to unauthorized access to category 1 and 2 quantities of radioactive materials.

Amended requirements for the transportation of radioactive materials include:

1. New requirements for recipient license verification;
2. Preplanning and coordination of shipments;
3. Advance notification of shipments;
4. Notification of shipment delays, schedule changes, and suspected loss of a shipment;
5. Control and monitoring of shipments.

Security requirements for shipments of irradiated reactor fuel that weighs 100 grams (0.22 pounds) or less in net weight of irradiated fuel which has a total external radiation dose rate in excess of 100 rad per hour at a distance of 1 meter are also included in this final rule.

Effective Date

This final rule will become effective on May 20, 2013 and Compliance with the final rule is required by March 19, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-19/pdf/2013-05895.pdf>