

**VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.**

**REGULATORY UPDATE – December 2013**

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**A. EPA Updated Guidance Document: “Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) Regulations: A User-Friendly Reference Document for RCRA Subtitle C Permit Writers and Permittees”**

On October 29, 2013, the Environmental Protection Agency (EPA) released version 3 of the *Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) Regulations: A User-Friendly Reference Document for RCRA Subtitle C Permit Writers and Permittees*. This guidance document consolidates the TSDF regulatory requirements for hazardous waste TSDF’s into a guidance document that includes hyperlinked references to the regulations, *Federal Register* notices, flow charts, checklists, and other guidance documents.

**Link**

The link below will allow you to view/print this updated guidance document.

<http://www.epa.gov/osw/hazard/tsd/permit/tsd-regs/tsdf-ref-doc.pdf>

**B. EPA PCB Disposal Guide for Schools Website: Notice of Availability**

On October 21, 2013, EPA announced the release of a website titled “PCB-Containing Fluorescent Light Ballasts (FLBs) in School Buildings: A Guide for School Administrators and Maintenance Personnel.” The website provides information to school administrators and maintenance personnel on the hazards posed by polychlorinated biphenyls (PCBs) in PCB-containing FLBs, how to properly handle and dispose of these items, and how to properly retrofit the lighting fixtures in schools to remove potential PCB hazards.

**Link**

The link below will allow you access to the website.

<http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/ballasts.htm#02>

**C. New York: Mercury Thermostat Collection Act Signed into Law**

On December 18, 2013, New York Governor Andrew Cuomo signed the Mercury Thermostat Collection Act of 2013 into law.

**Summary**

This law requires thermostat manufacturers to establish and maintain a program for the collection, transportation, recycling, and proper management of out-of-service mercury thermostats at no cost to consumers. Manufacturers are required to:

1. By July 1, 2014, compile a list of thermostat wholesalers in New York State, offer them collection containers, and make collection containers available to contractors, retailers, and local governments that request the containers.

2. Beginning on July 1, 2014, conduct education and outreach efforts, including the establishment of a website that includes the identification and location of collection sites and the development of educational materials that can be distributed by wholesalers, retailers, contractors, and local governments.
3. Submit an annual report to the New York Department of Environmental Conservation that includes:
  - a. The number of thermostats collected in the previous calendar year and the estimated amount of mercury contained in the thermostats collected;
  - b. A list of all of the wholesalers, contractors, local governments, and retailers participating as collection sites;
  - c. An accounting of the administrative costs of the program;
  - d. A description of outreach strategies and examples of outreach and educational materials;
  - e. The address of the website where the annual report can be viewed;
  - f. A description of how the mercury thermostats were managed; and
  - g. Any modifications planned for the program.

Transporters are also prohibited from commingling mercury –containing thermostats with recyclable materials or delivering the mercury-containing thermostats to landfills, incinerators, or transfer stations.

#### **Effective Date**

This law became effective on the date of publication, December 18, 2013.

#### **Link**

The link below provides access to the NYDEC Mercury Management Website that includes a summary of the Mercury Thermostat Collection Act, a Frequently Asked Questions Section, and a link to the Act.

<http://www.dec.ny.gov/chemical/92655.html>

#### **D. EPA Amendment to Standards and Practices for All Appropriate Inquiries under CERCLA; Final Rule**

On December 30, 2013, EPA published a final rule (78 FR 79319-79324) amending the “All Appropriate Inquiries Rule” in 40 CFR Part 312 to reference ASTM Standard E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and clarifying that persons conducting all appropriate inquiries may use this procedure to comply with the All Appropriate Inquiries Rule.

#### **Summary**

This final rule provides the option of using ASTM E1527-13 when conducting all appropriate inquiries of potentially contaminated properties. However, the rule does not require the use of this standard. This provides the option of following the All Appropriate Inquiries rule in 40 CFR Part

312 or using the ASTM E1527-13 standard. Differences between ASTM E1527-13 and 40 CFR Part 312 are:

1. The definition of “recognized environmental condition,” updated in ASTM E1527-13.
2. The definition of “historical recognized environmental condition,” updated in ASTM E1527-13.
3. ASTM E1527-13 includes a definition for “controlled recognized environmental condition.”
4. ASTM E1527-13 revised the definition of “migrate/migration” to include vapor migrations.

#### **Effective Date**

This final rule became effective on the date of publication, December 30, 2013.

#### **Links**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-30/pdf/2013-31112.pdf>

The ASTM E1527-13 Standard is available for purchase at the link below.

<http://www.astm.org>

#### **E. EPA Chlorsulfuron; Community Right-to-Know Toxic Chemical Release Reporting; Denial of Petition**

On December 9, 2013, EPA published a denial (78 FR 73787-73793) of a petition to remove chlorsulfuron from the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

#### **Background**

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

On May 18, 2012, DuPont Crop Protection, Technology Sciences Group (DuPont) submitted a petition to EPA requesting that chlorsulfuron be deleted from the list of chemicals subject to reporting under EPCRA Section 313. DuPont’s petition contended that studies have shown that chlorsulfuron does not cause developmental or reproductive toxicity in humans therefore the chemical no longer met the listing criteria. The petition did not address the environmental effects of chlorsulfuron.

#### **Summary**

EPA is denying the petition to delete chlorsulfuron from the EPCRA Section 313 list of toxic chemicals based on their conclusion that chlorsulfuron can reasonably be anticipated to cause

toxicity to aquatic plants. Studies have shown that chlorsulfuron is highly toxic to aquatic plants including duckweed, green algae, and blue green algae.

Chlorsulfuron remains on the EPCRA Section 313 list of toxic chemicals and facilities that manufacture, process, or otherwise this chemical in quantities above the reporting threshold must submit annual reports to EPA by July 1 each year.

#### **Effective Date**

The denial of DuPont's petition became effective on November 18, 2013.

#### **Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-09/pdf/2013-28365.pdf>

#### **F. DOT/FMCSA Regulatory Guidance on Hours of Service of Drivers Rest Break Requirement; Drivers who Become Ineligible for the "Short-Haul" Exception during the Duty Day; Regulatory Guidance**

On December 19, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a regulatory guidance (78 FR 76757-76758) addressing the application of the 30-minute break rule to interstate drivers of commercial motor vehicles (CMVs) who begin their duty days as "short haul" or "100 Air Mile Radius" drivers that are exempt from the break rule, but who occasionally exceed the short haul distance or time limits. In this regulatory guidance FMCSA is clarifying that drivers that exceed the short haul distance or time limits become subject to the break requirements and must prepare a record-of-duty-status (RODS) for the day.

#### **Summary**

Occasionally, a CMV driver will begin the duty day fully expecting to meet all of the requirements for "short-haul operations" as defined in 49 CFR 395.1(e) but circumstances beyond the driver's control may arise and result in operations that do not meet those requirements. For example, a driver engaged in short-haul operations would no longer qualify for that exception if he or she is unable to remain within the required radius of operation (100 or 150 air-miles), or, in the case of the 100 air-mile radius driver, when a CMV driver cannot complete the duty day within 12 hours of its start.

When the driver first learns of the changes to his or her itinerary and subsequent ineligibility for the short-haul exemption, the driver may have already missed the first mandatory rest break of the break rule (i.e., more than 8 hours may have elapsed since the driver was last off duty, or in the sleeper berth, for at least 30 minutes). To address this issue, FMCSA advises that in such situations, the driver should not be considered to be in violation of the break rule. The driver should annotate the RODS to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity. Ideally, this would be prior to preparing the RODS or immediately following the preparation of the RODS. Under FMCSA's existing hours of

service (HOS) requirements and guidance, drivers would begin preparing the RODS as soon as they determine they are no longer eligible for the RODS exemption.

The following regulatory guidance question has been added to 49 CFR 395.1:

*Question 33.* If a driver using either short-haul exception in 49 CFR 395.1(e) finds it necessary to exceed the exception limitations for unforeseen reasons, is the driver in violation of the 49 CFR 395.3 rest break provision if more than 8 hours have passed without having taken the required rest break?

*Guidance.* No. A driver using a 49 CFR 395.1(e) short-haul exception who finds it necessary to exceed the exception limitations for unforeseen reasons, is not in violation of the 49 CFR 395.3 rest-break requirements if 8 or more hours have passed at the time the driver becomes aware of the inability to use the short-haul exception. The driver should annotate the record-of-duty-status to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity.

#### **Effective Date**

This regulatory guidance became effective on December 19, 2013.

#### **Link**

The link below will allow you to view/print the regulatory guidance.

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-19/pdf/2013-30205.pdf>

### **G. DOT/FMCSA Motor Carrier Management Information System (MCMIS) Changes to Improve Uniformity in the Treatment of Inspection Violation Data; Notice and Request for Comment**

On December 2, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (78 FR 72146-72149) announcing changes to the Motor Carrier Management Information System (MCMIS) to allow FMCSA to upload the results of associated adjudicated State citations for roadside inspection violation data.

#### **Summary**

The MCMIS will be modified to accept adjudication information regarding a citation associated with a violation that was dismissed or resulted in a finding of not guilty; resulted in a conviction of a different or lesser charge; or resulted in a conviction of the original charge.

States currently report violations discovered through roadside inspections to FMCSA. Motor carriers and drivers alleging that errors have occurred may petition the States for correction through DataQs. DataQs is an online system that provides an electronic means for drivers, motor carriers, and members of the public to submit concerns regarding the accuracy of Federal and State crash, inspection, and violation data in FMCSA data systems. One of the challenges that FMCSA faces in trying to ensure the data accuracy is how best to consider violations cited during roadside

inspections that are subsequently adjudicated in State and local courts. Typically, the roadside inspection results are uploaded by the State enforcement agency into FMCSA's information systems and the subsequent adjudication happens much later with no practical means for the adjudication results to be transmitted directly to FMCSA. Therefore, FMCSA is modifying its MCMIS to accept adjudication information. The States will modify their processes and procedures to capture the State and local adjudication results associated with roadside inspection violations and upload the information to FMCSA. These changes will improve the uniformity and quality of data vital to improving safety on the Nation's roads.

**Comments Due**

Comments on this notice must be received by FMCSA on or before January 2, 2014.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-02/pdf/2013-28795.pdf>

**H. DOT/FMCSA Proposed Enhancements to the Motor Carrier Safety Measurement System (SMS) Public Web Site; Extension of Comment Period**

On December 17, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an extension of the comment period (78 FR 76391-76392) for the proposed enhancements to the display of information on FMCSA's Safety Measurement System (SMS) public website.

**Summary**

On November 5, 2013, FMCSA published a notice (78 FR 66420) proposing enhancements to the display of information on FMCSA's SMS website. The enhancements were proposed in an effort to provide more comprehensive, informative, and regularly updated safety and compliance performance data.

On December 6, 2013, Advocates for Highway and Auto Safety formally requested that FMCSA extend the comment period by 60 days to allow additional time to evaluate the changes to the SMS website. In this notice, FMCSA is agreeing to a 15 day extension to the comment period.

A summary of the November 5, 2013, notice of proposed enhancements is included in the November 2013 Regulatory Update.

**Comments Due**

Comments must be received by FMCSA on or before January 21, 2014.

**Link**

The link below will allow you to view/print this notice of extension of the comment period.

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-17/pdf/2013-29958.pdf>

**I. DOT/PHMSA New Jersey Regulations on Transportation of Regulated Medical Waste; Notice of Administrative Determination of Preemption**

On December 12, 2013, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of administrative determination of preemption (78 FR 75672-75676) regarding the State of New Jersey's regulations on the transportation of regulated medical waste.

**Summary**

The Healthcare Waste Institute applied to PHMSA for a determination of whether the Federal hazardous material transportation law preempts requirements in the New Jersey Administrative Code (N.J.A.C.) for the transportation of regulated medical waste.

As a result, PHMSA has determined that Federal hazardous material transportation law preempts the following requirements in the N.J.A.C. because the requirements are not substantively the same as the requirements in the hazardous materials regulations (HMR):

1. N.J.A.C. 7:26-3A.10(a) that generators must separate into different containers before transport sharps, fluids (greater than 20 cc), and other regulated medical waste;
2. N.J.A.C. 7:26-3A.11(d) which allows a generator to ship oversized medical waste without placing it in a packaging as required by the HMR;
3. N.J.A.C. 7:26-3A.14 that the words "Medical Waste" or "Infections Waste" must be labeled on the outside of the package when there is untreated regulated medical waste;
4. N.J.A.C. 7:26-3A.15 that each "generator shall mark each individual container of regulated medical waste in accordance with all applicable Federal regulations..." and that the markings must include details of the transporter's name, the date of shipment, the intermediate handler's name, and other specific information;
5. N.J.A.C. 7:26-3A.19 and those provisions in 7:26-3A.31 which require the use of a specific "tracking form" to accompany shipments of regulated medical waste that are prescribed for either the generator or the transporter;
6. N.J.A.C. 7:26-3A.28 that, when transferring between transporters, each transporter must place a water resistant tag below the generator's marking on the outer surface of the container with the transporter's name, solid waste registration number, and date of receipt; and
7. N.J.A.C. 7:26-3A.30 which requires that a vehicle used to transport regulated medical waste must have: (a) the name of the transporter; (b) the New Jersey Department of Environmental Protection (NJDEP) solid waste transporter registration number; and (c) either the words "Medical Waste" or "Infections Waste" on two sides and the back of the cargo-carrying body.
8. N.J.A.C. 7:26-3A.45, to the extent that it requires rail transporters to comply with the transporter requirements of 7:26-3A.28 and 7:26-3A.30.
9. N.J.A.C. 7:26-3A.46 which requires a specific tracking form to accompany shipments of regulated medical waste for rail transporters.

Federal hazardous transportation law does NOT preempt the following requirements because they do not create an obstacle in complying with the HMR:



1. N.J.A.C. 7:26-3A.21(a)(1) to the extent that it requires the generator to retain a copy of the shipping paper for at least three years from the date the regulated medical waste was accepted by the transporter;
2. N.J.A.C. 7:26-3A.21(a)(2) to the extent that it requires the generator to retain a copy of any exception report for at least three years after the day the exception report was submitted;
3. N.J.A.C. 7:26-3A.22 to the extent that it requires the generator of regulated medical waste to file an exception report with the state when a transporter and/or destination facility notifies the generator of any discrepancy between the shipment as accepted by the initial transporter and delivered to the destination facility;
4. N.J.A.C. 7:26-3A.32 to the extent that it requires the transporter to deliver the entire quantity of regulated medical waste to the proper party listed on the tracking form.
5. N.J.A.C. 7:26-3A.33 to the extent that it does not require a particular form to be used to consolidate the multiple shipments;
6. N.J.A.C. 7:26-3A.34 to the extent that it requires that the transporter of regulated medical waste to retain a copy of the shipping paper for at least three years from the date the regulated medical waste was accepted by the next party; and
7. N.J.A.C. 7:26-3A.41 to the extent that it requires intermediate handlers and destination facilities to certify that they had received the listed regulated medical waste.

#### **Effective Date**

This determination will become effective on January 1, 2014 (if no petitions for reconsideration are received by PHMSA).

#### **Link**

The link below will allow you to view/print the notice of administrative determination of preemption.

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-12/pdf/2013-29604.pdf>

#### **J. DOT/PHMSA Hazardous Materials: Adoption of ASME Code Section XII and the National Board Inspection Code; Notice of Proposed Rulemaking**

On December 30, 2013, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (78 FR 79363-79388) that would amend the Hazardous Materials Regulations (HMR) applicable to the design, construction, certification, recertification and maintenance of cargo tank motor vehicles, cryogenic portable tanks, and multi-unit tank car tanks (ton tanks).

#### **Background**

The American Society of Mechanical Engineers (ASME), the National Board of Boiler and Pressure Vessel Inspectors (National Board), and the Pressure Vessel Manufacturers Association (PVMA) submitted petitions for rulemaking to PHMSA requesting that the HMR be amended to allow for the use of the 2013 edition of ASME's *Boiler and Pressure Vessel Codes, Section XII (Section XII)* for the design, construction, and certification of cargo tank motor vehicles, cryogenic portable tanks and ton tanks. *Section XII* establishes standards for the construction and continued

service of pressure vessels for transporting hazardous materials by highway, rail, air or water at pressures from close to 15 psig external pressure to 3,000 psig and volumes greater than 120 gallons.

PHMSA also proposes to authorize the use of the 2013 edition of the National Board of Boiler and Pressure Vessel Inspectors' *National Board Inspection Code (NBIC)*. The 2013 edition of the NBIC provides rules and guidelines for installing, inspecting, repairing and altering boilers, pressure vessels and pressure relief devices.

### **Summary**

If the proposed amendments are adopted, manufacturers could choose to build their tanks using either the specifications in *Section XII* or those in *Section VIII, Division 1*. *Section VIII, Division 1* applies to the construction of new tanks only, while *Section XII* applies to both new construction and continued service. The notice of proposed rulemaking (NPRM) would also authorize a manufacturer who builds a tank using *Section VIII, Division 1* to use either the 1992 edition of the NBIC that is incorporated by reference or the 2013 edition of the NBIC. Manufacturers who build tanks using *Section XII* would be required to use the 2013 edition of the NBIC.

### **Comments Due**

Comments on this notice of proposed rulemaking must be submitted to PHMSA by March 31, 2014.

### **Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-30/pdf/2013-31046.pdf>

## **K. OSHA Process Safety Management and Prevention of Major Chemical Accidents; Request for Information**

On December 9, 2013, the Occupational Safety and Health Administration (OSHA) published a request for information (78 FR 73756-73768) on potential revisions to the Process Safety Management (PSM) standard, the Explosives and Blasting Agents standard, potential updates to the Flammable Liquids and Spray Finishing standards, and potential changes to PSM enforcement policies.

### **Background**

OSHA promulgated the 29 CFR 1910.119 Process Safety Management (PSM) standard in 1992 in response to catastrophic chemical-release incidents that occurred worldwide. The main objective of the PSM standard is to prevent or minimize employee exposure to the hazards associated with uncontrolled releases of highly hazardous chemicals. The PSM standard has been effective in improving process safety in the United States and protecting workers from many of the hazards associated with uncontrolled releases of highly hazardous chemicals. However, major incidents have continued to occur. This has led OSHA to determine that revisions to the PSM standard may

be needed to address coverage issues. In addition, OSHA is considering related revisions to the Explosives and Blasting Agents standard to address potential coverage issues and updates to the Flammable Liquids and Spray Finishing standards to better align these standards with current versions of applicable consensus standards.

In the request for information OSHA is seeking comment on the following topics as potential candidates for rulemaking or enforcement policy changes:

1. Clarifying the PSM exemption for atmospheric storage tanks;
2. Oil and Gas Well Drilling and Servicing;
3. Oil and Gas Production Facilities;
4. Expanding PSM Coverage and Requirements for Reactivity Hazards;
5. Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard;
6. Revising the PSM Standard to Require Additional Management System Elements;
7. Amending Paragraph (d) of the PSM Standard to Require Evaluation of Updates to Applicable recognized and generally accepted good engineering practices (RAGAGEP);
8. Clarifying the PSM Standard by adding a Definition for RAGAGEP;
9. Expanding the Scope of Paragraph (j) of the PSM Standard to Cover the Mechanical Integrity of Any Safety-Critical Equipment;
10. Clarifying Paragraph (l) of the PSM Standard with an Explicit Requirement that Employers Manage Organizational Changes;
11. Revising Paragraph (n) of the PSM Standard to Require Coordination of Emergency Planning with Local Emergency Response Authorities;
12. Revising Paragraph (o) of the PSM Standard to Require Third-Party Compliance Audits;
13. Expanding the Requirements of 29 CFR 1910.109 to Cover Dismantling and Disposal of Explosives, Blasting Agents, and Pyrotechnics;
14. Updating 29 CFR 1910.106 and 1910.107 Based on the Latest Applicable Consensus Standards;
15. Updating the Regulations Addressing the Storage, Handling, and Management of Ammonium Nitrate;
16. Changing the Enforcement Policy of the PSM Exemption for Retail Facilities; and
17. Changing the Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard without Specific Concentrations.

#### **Comments Due**

Comments must be submitted to OSHA by March 10, 2014.

#### **Link**

The link below will allow you to view/print this request for information.

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-09/pdf/2013-29197.pdf>

#### **L. OSHA Online Whistleblower Complaint Form; Notice of Availability**

On December 5, 2013, OSHA issued a news release announcing the availability of an on-line form to provide workers (whistleblowers) a new option to file retaliation complaints. Workers are now

able to submit complaints to OSHA electronically, by filing a written complaint, or by calling the agency's 1-800-321-OSHA (6742) number or an OSHA regional or area office.

The online form prompts the worker to include basic whistleblower complaint information so that they can be contacted by OSHA for follow-up. Complaints are automatically routed to the appropriate regional whistleblower investigators.

**Link**

The link below opens OSHA's Whistleblower Website and provides access to the on-line complaint form.

<http://www.whistleblowers.gov/>

**M. DOJ/DEA Schedules of Controlled Substances: Placement of Perampanel into Schedule III; Final Rule**

On December 2, 2013, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (78 FR 72013-72016) placing perampanel [2-(2-oxo-1-phenyl-5-pyridin-2-yl-1,2-dihydropyridin-3-yl) benzonitrile], including its salts, isomers, and salts of isomers, into schedule III of the Controlled Substances Act (CSA).

**Summary**

On October 22, 2012, the Food and Drug Administration (FDA) approved a new drug application for perampanel as an adjunctive therapy for the treatment of partial-onset seizures with or without secondarily generalized seizures in patients with epilepsy 12 years of age or older. Based on a consideration of all comments, the scientific and medical evaluation and recommendation from the Department of Health and Human Services (HHS) along with DEA's consideration of their eight factor analysis, the DEA has determined a potential for abuse of perampanel exists. Therefore, DEA is publishing this final rule subjecting perampanel, its salts, isomers, and salts of isomers to all the regulatory controls as Schedule III Controlled Substances.

**Effective Date**

This final rule became effective on January 2, 2014.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-02/pdf/2013-28778.pdf>