

VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.

REGULATORY UPDATE – April 2014

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No Miscellaneous Updates for April 2014

A. EPA Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices to Enhance Effectiveness to the RCRA Program; Notice; Extension of Comment Period

On April 10, 2014, the Environmental Protection Agency (EPA) published a notice (79 FR 19905-19906) extending the comment period for the Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on the Practices to Enhance Effectiveness to the Resource Conservation and Recovery Act Program; Notice of Data Availability and Request for Comment published on February 14, 2014 (79 FR 8926).

A Summary of the Notice of Data Availability and Request for Comment is included in the February Regulatory Update.

Due Date

In this notice EPA is extending the comment period 45 days. Comments must be submitted to EPA on or before May 30, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-10/pdf/2014-08043.pdf>

B. EPA Additions to List of Section 40 CFR 241.4 Categorical Non-Waste Fuels; Proposed Rule

On April 14, 2014, EPA published a proposed rule (79 FR 21005-21033) that would amend the Non-Hazardous Secondary Materials regulations by adding three materials to the list of categorical non-waste fuels.

Background

On March 21, 2011, EPA published a final rule (76 FR 15456) that codified the standards and procedures to be used for identifying which non-hazardous secondary materials (NHSMs) are “solid wastes” when used as fuels or ingredients in combustion units. 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 section 129 of the Clean Air Act (CAA) or emission standards for commercial, industrial, and institutional boilers under CAA section 112.

Summary

This proposed rule would amend the 40 CFR 241.4(a) regulations by adding three NHSMs to the list of categorical non-waste fuels. The three proposed new NHSMs are:

1. Construction and Demolition (C&D) Debris processed according to best management practices;

2. Paper recycling residuals, including old corrugated cardboard (OCC) rejects, generated from the recycling of recovered paper and paperboard products and burned on-site by paper recycling mills whose boilers are designed to burn solid fuel; and
3. Creosote-treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil.

Comments Due

Comments on this proposed rule must be received by EPA on or before June 13, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-14/pdf/2014-07375.pdf>

C. EPA and DoD Definition of “Waters of the United States” under the Clean Water Act; Proposed Rule

On April 21, 2014, EPA and the Department of Defense (DoD) published a proposed rule (79 FR 22187-22274) that would redefine the scope of waters protected under the Clean Water Act (CWA).

Background

The Clean Water Act was established by the Federal Water Pollution Control Act Amendments of 1972 as an amendment to the 1948 Federal Water Pollution Control Act. The CWA was further amended in 1977 and 1987. The stated objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. The jurisdictional scope of the CWA is to “navigable waters of the United States.” The term “navigable waters” is used in several provisions of the CWA including the Spill Prevention Control, and Countermeasures (SPCC) Program and the National Pollutant Discharge Elimination System (NPDES) permit program.

The term “waters of the United States” is defined by EPA. EPA’s definition of “waters of the United States” has been a part of several court rulings. This proposed rule would revise the existing definition of “waters of the United States” to be consistent with science and the court rulings.

EPA believes that the proposed rule will reduce documentation requirements and the time required for making jurisdictional findings on “navigable waters of the United States” by providing clarity to regulators, stakeholders, and the regulated public. They also hope that the proposed rule will reduce the number of case-specific analyses required to determine CWA jurisdiction and the need for permitting or enforcement actions.

Summary

The proposed rule would define “waters of the United States” for all CWA programs including SPCC and NPDES as:

1. Traditional navigable waters;
2. Interstate waters, including interstate wetlands;
3. The territorial seas;
4. Impoundments of traditional navigable waters, interstate waters, including interstate wetlands, the territorial seas, and tributaries of such waters;
5. Tributaries of traditional navigable waters, interstate waters, or the territorial seas;
6. Adjacent waters, including adjacent wetlands.
7. Other waters, which will be determined on a case-specific basis. Other waters include wetlands, provided that these waters alone, or in combination with other similarly situated waters located in the same region have a significant nexus to a traditional navigable water, interstate water, or the territorial seas.

The proposed rule also includes definitions of the terms:

1. Tributary
2. Floodplain;
3. Neighboring; and
4. Riparian Area

The proposed rule excludes certain waters from the definition of “waters of the United States.” The proposed rule would keep in place longstanding exemptions in the CWA for farming, silviculture, ranching, and water transfers. Additional exclusions in the proposed rule are:

1. Wastewater treatment systems;
2. Prior converted cropland;
3. Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow;
4. Ditches that do not contribute flow, either directly or through another water, to a traditional navigable water, the territorial seas, or an impoundment of a jurisdictional water;
5. Artificially irrigated areas that would revert to upland should irrigation cease;
6. Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for purposes such as stock watering, irrigation, settling basins, or rice growing;
7. Artificial reflecting pools or swimming pools created by excavating and/or diking dry land;
8. Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons;
9. Water filled depressions created incidental to construction activity;
10. Groundwater;
11. Gullies, rills, and non-wetland swales.

Comments Due

Comments on this proposed rule must be submitted to EPA on or before July 21, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-21/pdf/2014-07142.pdf>

D. EPA and States Developing E-Enterprise for the Environment

EPA and State officials have held a series of meetings and are in the early stages of the development of E-Enterprise for the Environment (E-Enterprise). E-Enterprise is an EPA-State joint initiative to improve environmental performance and enhance services to the regulated community, environmental agencies, and the public.

Some of the goals of the E-Enterprise Initiative are:

1. The development of a federal regulated facility portal that would provide an integrated platform for e-transaction services including e-reporting, e-notifications, and compliance assistance services;
2. Move from paper based reporting to electronic reporting;
3. The development of “smart” online tools that would help regulated entities understand regulatory requirements and guide them through reporting processes;
4. The development of integrated electronic reporting for federal and state reporting;
5. The development of a portfolio of ready-to-implement advanced monitoring and data collection and analysis solutions.

The goal is for E-Enterprise initiatives to reduce reporting burdens to EPA by 1 million hours by September 30, 2015.

Link

The link below provides access to the E-Enterprise Webpage.

<http://www.exchangenetwork.net/e-enterprise/>

E. DOT/FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse; Notice of Proposed Rulemaking; Extension of Comment Period

On April 22, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an extension of the comment period (79 FR 22467-22468) for the February 20, 2014, Commercial Driver’s License Drug and Alcohol Clearinghouse notice of proposed rulemaking.

Summary

The notice of proposed rulemaking would require employers and service agents to report information about current and prospective employee’s drug and alcohol test results to a Drug and Alcohol Clearinghouse (Clearinghouse). It would also require employers and service agents to

search the database for current and prospective employees' positive drug and alcohol test results, and refusals to test, as a condition of permitting those employees to perform safety-sensitive functions.

On April 15, 2014, the Owner-Operator Independent Drivers Association (OOIDA) petitioned FMCSA for a 60-day extension of the comment period.

Comments Due

Following a review of OOIDA's petition for an extension of the comment period FMCSA has agreed to extend the comment period 30 days. Comments must be submitted to FMCSA by May 21, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-22/pdf/2014-09143.pdf>

F. DOT/FMCSA Electronic Documents and Signatures; Notice of Proposed Rulemaking

On April 28, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (79 FR 23306-23316) that would allow the use of electronic records and signatures to satisfy certain FMCSA regulatory requirements.

Background

In recent years, FMCSA has received numerous requests from motor carriers seeking permission to use electronic methods to comply with various regulations that require motor carriers and individuals to generate, sign, or store documents. FMCSA has made case-by-case determinations on these requests. Recognizing that many businesses and individuals can achieve greater efficiencies using electronic methods FMCSA decided to give regulated entities the flexibility to choose which methods to use.

On January 4, 2011, FMCSA issued regulatory guidance (76 FR 23338) on the use of electronic signatures and documents to satisfy FMCSA's regulatory requirements. The guidance provided that, for purposes of complying with any provision in 49 CFR Parts 300-399 that requires a document to be created, signed, certified, or retained by any person or entity, that person may, but is not required to, use electronic methods. The guidance further stated that in order for electronic methods to satisfy FMCSA's regulatory requirements, the documents or signatures had to accurately reflect the information in the record and remain accessible in a form that can be accurately viewed or reproduced.

Summary

The proposed rule would codify FMCSA's guidance into newly proposed 49 CFR 390.32 and eliminate references to outdated recordkeeping and reporting methods through the regulations

permitting the use of electronic methods to sign, certify, generate, exchange, or maintain records so long as the documents accurately reflect the information in the record and can be used for their intended purpose. The rule would apply only to those documents that FMCSA's regulations obligate entities or individuals to retain; it would not apply to forms or other documents that must be submitted directly to FMCSA.

Examples of records that would be allowed to be maintained electronically include: Driver Logs, Driver Vehicle Inspection Reports, Driver Qualification Files, and Vehicle Maintenance Records.

Comment Period

Comments on this notice of proposed rulemaking must be submitted to FMCSA by June 27, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-28/pdf/2014-09376.pdf>

G. DOT/PHMSA Permit Requirements for Transportation of Certain Hazardous Materials (New York, NY and Pittsburgh, PA); Public Notices and Invitations to Comment

On April 17, 2014, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published 2 separate notices of applications for administrative determinations regarding whether Federal hazardous material transportation law preempts (1) requirements of the New York City Fire Department for a permit to transport certain hazardous materials through New York City, or for transshipment from New York City, and the fee for the permit (79 FR 21838-21840) and (2) for the City of Pittsburgh, PA for a permit to transport hazardous materials by motor vehicle and the fee to obtain the permit (79 FR 21840-21842).

Background

49 U.S.C. 5125 contains preemption provisions that reflect Congress's longstanding view that a single body of uniform Federal regulations promotes safety and security in the transportation of hazardous materials. More than forty years ago the Senate Commerce Committee "endorse(d) the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation."

Any person directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination as to whether a requirement is preempted.

New York, NY

The American Trucking Associations, Inc. (ATA) applied to PHMSA for a determination of whether Federal hazardous material transportation law preempts the provisions in Section 2702-02 of Title 3 of the Rules of the City of New York for a permit to transport certain hazardous

materials by motor vehicles in New York City and the fee for the permit. Specifically, ATA contends that the:

“City of New York’s regulatory regime is deficient in several ways. Only motor carriers are required to obtain City of New York’s permit, which imposes an unfair burden on a single mode of transportation. The permit requirements only apply to some carriers and impedes their drivers’ ability to comply with 49 CFR 177.800(d), which mandates that ‘hazardous materials must be transported without unnecessary delay.’ Finally, City of New York cannot show that it is using funds generated from its permit fees for hazardous materials enforcement and emergency response training.”

Pittsburgh, PA

ATA also applied to PHMSA for a determination of whether Federal hazardous materials transportation law preempts Chapter 801 of Title 8 of the Pittsburgh, PA Fire Prevention Code for a permit to transport hazardous materials by motor vehicle and the fee to obtain the permit. ATA contends that Pittsburgh’s permit and permit fee requirements should be preempted because:

“Only motor carriers are required to obtain Pittsburgh’s permit, which imposes an unfair burden on a single mode of transportation. The permit requirements also present possible substantive dissimilarity issues in violation of 49 CFR 107.201(d). Finally, Pittsburgh cannot show that it is using funds generated from its permit fees for hazardous materials enforcement and emergency response training.”

Comments Due

Comments for both preemption determination petitions must be submitted to PHMSA on or before June 2, 2014.

Links

The link below will allow you to view/print the notice of the New York, NY preemption determination.

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-17/pdf/2014-08691.pdf>

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-04-17/pdf/2014-08690.pdf>