



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS JUNE 2014 REGULATORY UPDATE

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A. EPA Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule; Final Rule

On June 26, 2014, the Environmental Protection Agency (EPA) published a final rule (79 FR 36220-36231) revising the export provisions of the cathode ray tube (CRT) rules that was initially published on July 28, 2006.

Background

The CRT final rule was published on July 28, 2006 (71 FR 42928) in an effort to encourage the recycling and reuse of CRTs. The final rule included requirements for CRTs exported for recycling. Under the current rules, the exporter is required to submit a notification to EPA at least 60-days prior to shipment. The notification must include the contact information of the exporter, the recycler, and an alternate recycler, a description of the recycling operations, the frequency and rate of export, the means of transport, the total quantity of CRTs to be shipped, and information regarding any transit countries the shipment will pass through. EPA notifies the receiving country and any transit countries of the intended exportation of CRTs. Once the receiving country consents in writing to receive the CRTs, EPA sends an Acknowledgement of Consent (AOC) to the exporter. An exporter may not ship the CRTs until he has received an AOC.

The current export requirements for intact CRTs exported for reuse are less stringent. Exporters are required to submit a one-time notification to EPA with contact information and a statement that the CRTs are being exported for reuse. In addition, normal business records demonstrating that the CRTs are exported for reuse (e.g., contracts, invoices, and shipping documents) must be maintained by the exporter for three years.

On March 2012, EPA published a proposed rule (77 FR 15336) to revise certain export provisions of the current CRT rule in an effort to improve the tracking of exported CRTs for reuse and recycling and to clarify who is subject to the rule. Also, EPA proposed to collect additional information on shipments of CRTs that are exported for reuse.

Summary

This final rule revises the export provisions of the conditional exclusion from the definition of solid waste for used CRTs (40 CFR 261.4(e)(22)). Following are the revisions to the export provisions of the CRT Rule:

1. Definition of CRT Exporter was added to the regulations.

“CRT exporter means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such transport.”

2. Annual Reporting Requirements for Used CRTs Exported for Recycling

An exporter must submit an annual report to EPA no later than March 1 of each year summarizing the quantities (in kilograms), frequency of shipment, and the ultimate destinations of all used CRTs exported for recycling during the previous calendar year. The exporter must also sign a certification statement certifying the accuracy of the information included in the annual report.

3. Notification Requirements for Used CRTs Exported for Recycling

The notification of intent to export used CRTs for recycling was revised to include a condition that the exporter must state the name and address of the recycler or recyclers and the estimated quantity of used CRTs to be exported to each facility, as well as the names of any alternate recyclers.

4. Notification Requirements for Used, Intact CRTs Exported for Reuse

Exporters of used, intact CRTs sent for reuse must send a notification to EPA for export activities extending over a 12-month or less period. The written notification must be signed by the exporter and must contain the following information.

- a. The name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter;
- b. The estimated frequency at which CRTs would be exported and the period of time over which they would be exported;
- c. The estimated total quantity of CRTs to be exported in kilograms;
- d. All points of entry to and departure from each transit country through which the CRTs would pass and a description of the approximate length of time the CRTs would remain in each country and how the CRTs would be handling in these countries;
- e. A description of the means of transportation and container for each shipment;
- f. The name and address of the ultimate destination facility where the CRTs will be reused, the estimated quantity of CRTs to be sent to each facility, and the name of any alternate destination facility;
- g. A description of the manner in which the CRTs will be reused; and
- h. A signed certification statement certifying the accuracy of the information submitted.

5. Normal Business Records Provision for Used CRTs Exported for Reuse

40 CFR 261.41(b) is amended to read:

“CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA”

Effective Date

This final rule will become effective on December 26, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-26/pdf/2014-14996.pdf>

B. DC Court of Appeals Vacates RCRA Gasification and Comparable Fuels Regulations

On June 27, 2014, the United States Court of Appeals for the District of Columbia Circuit (Court) ruled that EPA's Comparable Fuels and Gasification exclusions violated that Resource Conservation and Recovery Act (RCRA) and therefore the exclusions were vacated.

Summary

The “Comparable Fuel Exclusion” exempted certain oil-bearing hazardous waste secondary materials from the hazardous waste regulations if they were burned as a fuel and had contaminant levels comparable to fossil fuels.

The “Gasification Exclusion” exempted certain materials from the hazardous waste regulations when burned in gasification systems at refineries.

The Court ruled that these exclusions violated RCRA Section 6924(q) which requires EPA to “establish standards applicable to all fuel derived from hazardous waste.” RCRA Section 6924(q) was adopted in 1984 in order to override previous regulations set by EPA that exempted from strict RCRA requirements hazardous wastes burned as fuel for the recovery of usable energy. 6924(q) mandates that EPA establish rules “to protect human health and the environment” including standards that apply to facilities that produce hazardous waste derived fuels, standards for facilities that burn hazardous waste fuels for the purpose of energy recovery, and the distribution and/or marketing of hazardous waste fuels.

The Court’s opinion does not become final until the Court issues its mandate. Interested parties have 45 days to file petitions for a rehearing. If no petitions are filed, the mandate will be automatically issued 7 days following the end of the 45 day period. Once the mandate is issued the ruling will become official and these sections of the rule are effectively removed and all facilities must stop using the exclusions.

Links

The link below will allow you to view/print the Court ruling on the Comparable Fuels Exclusion.

[http://www.cadc.uscourts.gov/internet/opinions.nsf/BF0E61EA78EF2A9485257D04004F78C2/\\$file/98-1379-1499640.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/BF0E61EA78EF2A9485257D04004F78C2/$file/98-1379-1499640.pdf)

The link below will allow you to view/print the Court ruling on the Gasification Exclusion.

[http://www.cadc.uscourts.gov/internet/opinions.nsf/8810C7665141CE2185257D04004F86BC/\\$file/08-1144.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/8810C7665141CE2185257D04004F86BC/$file/08-1144.pdf)

C. EPA Identification and Listing of Hazardous Waste; Rebuttable Presumption for Used Oils; Correction

On June 20, 2014, EPA published a correction (79 FR 35290) to the rebuttable presumption definition by reinstating two paragraphs to 40 CFR 261.3(a)(2)(v).

Summary

EPA presumes that used oils containing more than 1,000 parts per million (ppm) of total halogens are a hazardous waste due to mixing with a listed halogenated hazardous waste. Generators may “rebut this presumption” by demonstrating that the used oil does not contain a hazardous waste. If a generator is able to demonstrate the rebuttable presumption the waste may be managed under the used oil management standards in 40 CFR Part 279 instead of being managed as a hazardous waste.

EPA has reinstated two paragraphs to 40 CFR 261.3 clarifying how the rebuttable presumption applies to certain wastes. The two paragraphs that were reinstated are:

1. 40 CFR 261.3(a)(2)(v)(A)

The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The

rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

Effective Date

This correction became effective on the date of publication, June 20, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-20/pdf/2014-14607.pdf>

D. EPA, New York, and New Jersey Conduct Chemical Inventory Inspections

On June 4, 2014, EPA Region 2 published a news release announcing that EPA Region 2 officials along with New Jersey and New York State and Local Agencies had recently conducted inspections of 30 facilities to ensure that the facilities are in compliance with the Emergency Planning and Community Right-to-Know Act.

Background

The Emergency Planning and Community Right-to-Know Act requires companies that manufacture, process, import, or otherwise use chemicals above a certain quantity to annually submit chemical inventory information to local authorities and to the state, providing detailed information about the chemicals they have at their facilities. The companies must submit the names, quantities, and hazards of the chemicals in storage to the local fire department, the State Emergency Response Commission, and the Local Emergency Planning Commission. This information is utilized by emergency responders so that they are aware that hazardous chemicals are at a facility, including the location and quantity of the chemicals, in the event that they need to respond to an emergency at the location.

Summary

The inspections identified violations of the Emergency Planning and Community Right-to-Know Act inventory requirements at 17 of the facilities inspected. These facilities did not supply chemical inventories and hazardous information to the appropriate governmental agencies as required. Several hundred other facilities have been contacted by the agency, providing them with detailed information regarding their hazardous chemical reporting requirements. EPA Region 2 intends to conduct additional Emergency Planning and Community Right-to-Know inspections in the near future.

Link

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

<http://yosemite.epa.gov/opa/admpress.nsf/d10ed0d99d826b068525735900400c2a/c6db6a8a0918857f85257ce5005fee24!OpenDocument>

E. Chemical Facility Safety and Security Working Group Recommends that Federal Agencies Consider Inherently Safer Technology Rulemaking

On June 6, 2014, the Chemical Facility Safety and Security Working Group (Working Group) published a report recommending six actions that EPA, the Department of Homeland Security, and the Occupational Safety and Health Administration (OSHA) should implement to improve the safety and

security of chemicals in the United States. The Working Group recommends that the following actions should be implemented within a year:

1. Solicit input on potential modernization and strengthening of EPA's Risk Management Program;
2. Issue an alert on inherently safer technologies, detailing concepts, principles and examples of the technologies, and begin working on voluntary guidance;
3. Request public comment on potential improvements to the Department of Homeland Security's Chemical Facility Anti-Terrorism Standards program;
4. Consider whether additional action from EPA is necessary to improve ammonium nitrate safety;
5. Evaluate whether additional action should be taken to regulate ammonium nitrate under the CFATS program; and
6. Work with States on Safe Drinking Water Act measures to better prepare for chemical spills.

Link

The link below will allow you to view/print the Actions to Improve Chemical Facility Safety and Security Report.

https://www.osha.gov/chemicalexecutiveorder/final_chemical_eo_status_report.pdf

F. DOT/FMCSA Motor Carrier Management Information System (MCMIS) Changes to Improve Uniformity in the Treatment of Inspection Violation Data; Interpretive Rule and Statement of Policy

On June 5, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an interpretive rule and statement of policy (79 FR 32491-32496) announcing changes to the Motor Carrier Management Information System (MCMIS) to support a more consistent program for handling DataQs seeking recognition of adjudicated citations. DataQs is a system implemented by FMCSA that allows a motor carrier to request and track a review of Federal and State compliance data that the carrier believes may be incomplete or incorrect. The system automatically forwards a Request for Data Review (RDR) to the appropriate office for resolution as well as collects updates and responses for current Requests.

Summary

This rule contains a general statement of policy and reflects a change in Agency practice and procedures with respect to the handling of adjudicated citations through DataQs and in Agency information systems. This rule does not amend any Agency regulation nor does it change how data correction is sought through DataQs. The implemented IT and program changes will allow FMCSA and the States to receive more complete information on the subsequent disposition of citations issued during roadside inspections by accepting certified records of adjudication results submitted through the DataQs process.

States adopt and enforce Federal standards for motor carrier safety and hazardous materials transportation under State law as an eligibility requirement for receipt of grant funds under the Motor Carrier Safety Assistance Program (MCSAP). MCSAP also requires that States report violations discovered through roadside inspections to FMCSA data systems and that they participate in FMCSA's data correction system known as DataQs.

In addition to the inspection data reported to FMCSA, States may issue a citation associated with a violation noted in the roadside inspection. These citations may subsequently be adjudicated in a due process system. The changes reflected in FMCSA's data systems will allow motor carriers or drivers to submit the results of an adjudicated citation through the DataQs System. After confirming the adequacy of the documentation submitted in a RDR, the State will submit the adjudication results into the new field created to record this information.

Adjudication results recorded in MCMIS will potentially impact other FMCSA data systems, such as the Agency's Safety Measurement System (SMS) and the Pre-employment Screening Program (PSP).

ADEQUATE DOCUMENTATION

FMCSA will accept scanned copies of certified documentation from the appropriate court or administrative tribunal. Examples include but are not limited to certified records of the docket entry, the order of dismissal, or entry of a "not guilty" determination. The submitter should obtain certified documents that are clearly identified and verifiable. These documents must be uploaded into the DataQs system for verification by a State official. Alternatively, the documentation may include a web site link to an official court website with adjudication results.

REVISED DataQs GUIDANCE TO THE STATES

FMCSA will issue revised direction to the States on receiving, reviewing, and documenting adjudication results when a RDR containing adequate documentation is submitted. Upon confirming the adequacy and accuracy of the documentation, States will enter the adjudication result in the field appending the inspection record in SafetyNet. State and Federal data systems will be modified to accept data concerning a citation associated with a violation that was dismissed or resulted in a finding of not guilty or resulted in a conviction of a different or lesser charge.

IMPACT OF CHANGES IN SMS AND PSP

Adjudication outcomes documented in MCMIS will impact the use of the cited violation in FMCSA's SMS and PSP databases as follows:

1. Dismissed with fine or punitive costs – Violation will remain in SMS and PSP;
2. Dismissed without fine or punitive court costs – Violation will be removed from SMS and PSP;
3. Not Guilty – Violation will be removed from SMS and PSP; and
4. Convicted of a lesser charge – Append inspection in SMS and PSP to indicate violation "Resulted in a conviction of a lesser charge." The SMS severity weight will be reduced to 1.

Effective Dates and Implementation

The policy announced in this rule applies to inspections that occur on or after August 23, 2014. DataQs will be modified to accept request for data reviews related to adjudicated citations in August 2014.

Link

The link below will allow you to view/print this interpretive rule and statement of policy.

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-13022.pdf>

G. OSHA Releases Interactive Training Web Program on Identifying Workplace Hazards

On June 11, 2014, the Occupational Safety and Health Administration (OSHA) announced the release of an on-line, interactive, Hazard Identification Training Tool.

Summary

The Hazard Identification Training Tool is an interactive, online, game-based training tool for small business owners, workers and others interested in learning the core concepts of hazard identification. OSHA's goal is that after using this tool, users will better understand the process to identify hazards in their own workplace.

This tool is intended to:

1. Teach small business owners and their employees the process for identifying hazards in their workplace; and
2. Raise awareness of the types of information and resources about workplace hazards that are available on OSHA's website.

Link

The link below provides access to the hazard identification training tool.

<https://www.osha.gov/hazfinder/>

H. DoD/Corps of Engineers/EPA Definition of “Waters of the States” Under the Clean Water Act; Extension of Comment Period

On June 24, 2014, the Department of Defense, the Corps of Engineers, and EPA published an extension of the comment period for the Definition of “Waters of the United States” proposed rule (79 FR 35712-35713).

Summary

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

The Agencies are extending the comment period in response to stakeholder requests for an extension. A summary of the proposed rule is included in the July 2014 Regulatory Update.

Comments Due

Following the extension of the comment period, comments now must be submitted on or before October 20, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-24/pdf/2014-14674.pdf>