

VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - January 2015

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A. EPA Definition of Solid Waste; Final Rule

On January 13, 2015, the Environmental Protection Agency (EPA) published a final rule (80 FR 1693-1814) revising several recycling-related provisions associated with the definition of solid waste (DSW) used to determine applicable hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA). EPA believes these revisions ensure that the hazardous secondary materials recycling regulations will encourage reclamation while still protecting human health and the environment.

Background

On October 30, 2008, EPA published a final rule (73 FR 64668) revising the definition of solid waste to exclude certain hazardous secondary materials from regulations as a hazardous waste under RCRA.

The Sierra Club submitted an administrative petition to EPA on January 29, 2009, requesting that EPA repeal the 2008 DSW final rule and stay the implementation of the rule. At the same time the American Petroleum Institute (API) and the Sierra Club filed judicial petitions challenging the rule in the District of Columbia U.S. Court of Appeals.

On September 7, 2010, EPA signed a settlement agreement with the Sierra Club where the Sierra Club agreed to withdraw their administrative petition and EPA agreed to develop a notice of proposed rulemaking on the DSW regulations by June 30, 2011, and take final action on the proposed rule by December 31, 2012.

In response to these court actions, EPA published a proposed rule to revise the definition of solid waste regulations on July 22, 2011. EPA then held two public meetings on the proposed rule and received written comments until October 20, 2011. In developing the 2011 proposed rule EPA also completed an environmental justice analysis. Following a review of all comments submitted and a review of the environmental justice analysis, EPA developed the DSW final rule and published it on January 13, 2015.

Summary

This final rule retains many of the benefits to generators including the ability of generators to recycle hazardous wastes without the hazardous waste counting towards generator status, but also includes significant revisions from the 2008 DSW final rule, many of which impact the recyclers. Some of the significant revisions include:

1. Withdraws the transfer-based exclusion and replaces it with the “Verified Recycler” exclusion;
2. Establishes a new requirement for off-site third-party recyclers to have a RCRA Hazardous Waste Permit or obtain a variance from EPA or the authorized State as a “Verified Recycler”;
3. Adds a requirement for recyclers to maintain financial assurance approved by EPA or the authorized State that would be available in the event of an emergency;
4. Clarifies that generators and recyclers will need to meet emergency response and preparedness requirements;
5. Codifies four mandatory legitimacy criteria for hazardous secondary material recycling. The four legitimacy criteria are:
 - a. Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process;
 - b. The recycling process must produce a valuable product or intermediate;
 - c. The hazardous secondary materials must be managed as a valuable commodity; and
 - d. The product of the recycling process must be comparable to a legitimate product or intermediate;

6. Retains the benefit for generators that the hazardous secondary materials managed in compliance with these regulations do not count towards the generators hazardous waste generation status and it does not need to be reported on the hazardous waste biennial report;
7. Codifies a definition for “Sham” recycling;
8. Establishes regulations to ensure companies are not speculatively accumulating hazardous secondary materials;
9. Adds a definition for “contained” for hazardous secondary materials; and
10. Establishes a Remanufacturing Exclusion for 18 higher-value solvents for reclamation from the Pharmaceutical Manufacturing, Basic Organic Chemical Manufacturing, Plastics and Resins Manufacturing, and Paints and Coatings Manufacturing industries.

Effective Date

This final rule will become effective on July 13, 2015.

The revisions to the definition of legitimacy, the prohibition on sham recycling, the additional recordkeeping requirements for speculative accumulation, and the standards and criteria for variances from classification as a solid waste are more stringent than the current federal hazardous waste regulations. These revisions will become effective in **all** States on July 13, 2015.

The remainder of the revisions are less stringent than the pre-2008 final rule and will need to be adopted by authorized States before they become effective in those States.

States that adopted the 2008 Definition of Solid Waste (DSW) final rule will need to adopt this final rule because revisions in this final rule are more stringent than the 2008 final rule.

Link

The link below will allow you to view/print the Definition of Solid Waste Final Rule.

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-13/pdf/2014-30382.pdf>

B. EPA Risk Assessment of Spent Foundry Sands in Soil-Related Applications

In October 2014, EPA published a “Risk Assessment of Spent Foundry Sands in Soil-Related Applications.” EPA, the U.S. Department of Agriculture (USDA), and the Ohio State University, completed a risk assessment of silica based foundry sands in soil-related applications.

Summary

The risk assessment indicates that silica-based foundry sands from iron, steel, and aluminum foundries do not pose risks of concern to human health and the environment. Therefore, EPA and USDA support the beneficial use of these materials in manufactured soil, soil-less potting media, and roadway sub-base.

Spent foundry sands from leaded and non-leaded brass and bronze foundries, and spent foundry sands containing olivine sand are **not** included in this risk assessment. Also, other wastes from foundries, including unused and broken cores, core room sweepings, cupola slag, scrubber sludge, baghouse dust and shotblast fines were **not** evaluated.

Foundries and sand recyclers must examine state regulations to ensure any planned uses of spent silica-based foundry sands from iron, steel, and aluminum foundries are consistent with state beneficial reuse and waste management regulations.

Link

The link below will allow you to view/print the Risk Assessment of Spent Foundry Sands in Soil-Related Applications.

<http://1.usa.gov/1BP122W>

C. EPA E-Enterprise for the Environment Portal; Notice of Webinars and Request for Comment

On January 26, 2015, EPA published a notice (80 FR 3962-3964) announcing three webinars and seeking comments on the development of an E-Enterprise for the Environment portal (E-Enterprise Portal).

Summary

The E-Enterprise Portal, is a website that would provide consolidated entry points for businesses and citizens to locate, obtain access to, and interact with relevant EPA, state, and tribal environmental programs and web resources. EPA's goal is to integrate information across government entities to provide a seamless experience when accessing EPA or partner portals or applications.

Webinar Dates and Times

EPA is hosting webinars and seeking comment on the value of establishing a portal and seeking information on what functions the portal should provide.

The date and time of the webinars are:

February 19, 2015 from 1-3 PM EST – This webinar is intended for regulatory agencies.

February 23, 2015 from 1-3 PM EST – This webinar is intended for regulated entities.

March 5, 2015 from 1-3 PM EST – This webinar is intended for the general public.

Links

The link below will allow you to view/print the notice of public meetings and request for comments.

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-26/pdf/2015-01277.pdf>

Regulatory Agency – February 19, 2015 webinar registration.

<https://attendee.gotowebinar.com/rt/1359012128777800450>

Regulated Entities – February 23, 2015 webinar registration.

<https://attendee.gotowebinar.com/rt/2565860280640724481>

General Public – March 5, 2015 webinar registration.

<https://attendee.gotowebinar.com/rt/983075909101638402>

D. EPA 2013 Toxic Release Inventory National Analysis Released

In January, 2015, EPA published the 2013 Toxics Release Inventory National Analysis.

Summary

The Toxics Release Inventory (TRI) tracks the management of certain toxic chemicals that may pose a threat to human health and the environment. Regulated U.S. facilities must submit annual TRI reports to EPA on the quantity of regulated chemicals that are released to the environment and/or managed through recycling, energy recovery, or treatment.

The TRI National Analysis is EPA's interpretation of the TRI data submitted by U.S. facilities. 21,598 facilities submitted TRI Reports in 2013, reporting that 25.63 billion pounds of toxic chemicals in production-related wastes were managed through recycling (36%), utilized for energy recovery (11%), treated (37%), or disposed of or released (16%).

Link

The link below will allow you to access EPA's 2013 TRI National Analysis website.

<http://www2.epa.gov/toxics-release-inventory-tri-program/2013-toxics-release-inventory-national-analysis>

E. EPA Office of Inspector General to Investigate Hazardous Waste Treatment, Storage, and Disposal Facility (TSDF) Inspection Frequency; Memorandum

On January 20, 2015, the Office of Inspector General (OIG) for EPA published a memorandum stating that the OIG will investigate EPA's progress in meeting their minimum inspection requirements for hazardous waste Treatment, Storage, and Disposal Facilities (TSDFs) under the Resource Conservation and Recovery Act (RCRA).

The objective of the investigation is to ensure that TSDF inspections are being conducted within the statutorily required frequency. Under the statutes, all hazardous waste TSDFs must be inspected at least once every two years. The investigation will be conducted at EPA Headquarters and in selected EPA Regions.

Link

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

http://www.epa.gov/oig/reports/notificationMemos/newStarts_01-23-15_RCRA_Inspections.pdf

F. EPA Use of Next Generation Compliance Tools in Civil Enforcement Settlements; Memorandum

On January 7, 2015, EPA Assistant Administrator, Cynthia Giles, published a memorandum titled the "Use of Next Generation Compliance Tools in Civil Enforcement Settlements."

Summary

Next Generation Compliance (Next Gen) is EPA's initiative to increase compliance by using advances in pollutant monitoring and information technology combined with a focus on designing more effective regulations and permits to reduce pollution.

The memorandum directs EPA Enforcement Staff to consider Next Gen compliance tools in all cases other than expedited cases. Next Gen compliance tools are defined by EPA as having at least one of three key features:

1. The use of a practice or requirement that is not yet commonly included in most settlements;

2. The use of modern information technology and/or advanced technology to provide information regarding pollutant releases and their levels closer to real time, more acceptable, and more complete;
3. The use of approaches to create a structure for ensuring settling parties comply with settlement requirements without increasing EPA's oversight burden.

Next Gen compliance tools addressed in this memorandum include:

1. Advanced monitoring, including both point source emission/discharge monitoring and ambient monitoring (e.g., fence-line monitoring of air pollution at the border of a facility),
2. Independent third-party verification of a settling party's compliance with settlement obligations,
3. Electronic reporting, and
4. Public accountability through increased transparency of compliance data.

Link

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

<http://www2.epa.gov/sites/production/files/2015-01/documents/memo-nextgen-useinenfsettlements.pdf>

G. DOT/PHMSA Hazardous Materials: Harmonization with International Standards (RRR and HM-215M); Final Rule

On January 8, 2015 the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (80 FR 1076-1169) amending the hazardous materials regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.

Summary

PHMSA has made these changes to harmonize the HMR with the recent changes made to the IMDG code, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI), the UN Recommendations and address three petitions for rulemaking. The amendments in this final rule affect the hazardous materials regulations in 49 CFR Parts 171, 172, 173, 175, 176, 178, and 180. Some of the major changes included in this final rule are:

1. A new exception from the HMR for marine pollutants up to 5 liters (1.3 gallons) for liquids or 5 kg (11 lbs.) for solids when packaged in accordance with the general packaging requirements of 49 CFR 173.24 and 173.24(a). This amendment exempts small packages of hazardous material from the HMR that are regulated only because of the presence of one or more marine pollutants. This exemption does **not** apply to marine pollutants that are a hazardous waste or a hazardous substance.
2. Revises the list of Marine Pollutants by adding 62 new entries and deleting one entry.
3. Revises the definition of a Large Salvage Packaging. The amended definition is:

Large salvage packaging means a special packaging into which damaged, defective or leaking hazardous materials packages, or hazardous materials that have spilled or leaked are placed for the purpose of transport for recovery or disposal, that-

- a. Is designed for mechanical handling; and

- b. Has a net mass greater than 400 kg (882 pounds) or a capacity of greater than 450 L (110 gallons), but has a volume of not more than 3 cubic meters (106 cubic feet).
4. Revises the definition of a non-bulk packaging by adding a new paragraph (4) to include bags and boxes conforming to the applicable requirements for specification packagings in 49 CFR Subpart L, if they have a maximum net mass of 400 kg (882 pounds) or less.
5. Revises the proper shipping names for Air Bag Inflators, Air Bag Modules, and Seat-Belt Pretensioners. The revised shipping names are:
 - a. UN3268 , Air bag inflators, air bag modules and seat-belt pretensioners, 9, III are reassigned with the new shipping name:

UN3268, Safety devices, *electrically initiated*, 9 (no Packing Group assigned)
 - b. UN0503, Air bag inflators, *or* Air bag modules, *or* Seat-belt Pretensioners, 1.4G are reassigned with a new shipping name:

UN0503, Safety devices, pyrotechnic, 1.4G (no Packing Group assigned)
6. Numerous revisions to the Hazardous Materials Table, 49 CFR 172.101. The revisions include adding, revising, or removing shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, vessel stowage codes, and aircraft maximum quantities.
7. Amendments to the Special Provisions in 49 CFR 172.102 by revising 13 special provisions, adding 9 special provisions, and deleting 1 special provision.

Effective Date

Unless otherwise specified, compliance with this final rule is required beginning on January 1, 2016, but voluntary compliance is authorized on January 1, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-08/pdf/2014-30462.pdf>

H. DOT/PHMSA Hazardous Materials: Miscellaneous Amendments (RRR and HM-218H); Proposed Rule

On January 23, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a proposed rule (80 FR 3788-3838) that would revise the Hazardous Materials Regulations (HMR) to update and clarify existing regulatory requirements.

Summary

The proposed amendments are designed to promote safer transportation practices, address petitions for rulemaking, facilitate international commerce, make editorial corrections and to simplify the regulations. Some of the proposed revisions include:

1. Remove the packing group II (PG II) designation in Column 5 of the Hazardous Materials Table, 49 CFR 172.101 for all organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1).

2. Amend 49 CFR 173.158(e) to require that when nitric acid in concentrations less than 90% is placed in glass inner packagings that will be packed in wooden or fiberboard outer packaging, that the glass inner packagings must be packed in tightly-closed, non-reactive intermediate packaging and cushioned with a non-reactive absorbent material.
3. Add a new section, 49 CFR 180.407(j) that would detail the pressure relief device (PRD) testing requirements for cargo tanks.
4. Would authorize Corrosive liquids, flammable, n.o.s. PG II and Oxidizing solid, corrosive, n.o.s. PG II to be shipped using the limited quantity exception.
5. Would clarify that the marking size requirement for both the proper shipping name and identification number is at least 12 mm (0.47 inches) for an intermediate bulk container (IBC) that is labeled instead of placarded.
6. Proposing to create a new paragraph, 49 CFR 173.159(j) to allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries. This paragraph would permit the transportation by highway or rail of damaged wet electric storage batteries packed in non-bulk packaging under the following conditions:
 - a. Drain the battery fluid to eliminate the potential for leakage during transportation;
 - b. Individually pack the battery in a leakproof intermediate package with sufficient non-reactive absorbent material capable of absorbing the release of any electrolyte;
 - c. Place the intermediate packaging in a leakproof outer packaging that conforms to the general packaging requirements of subpart B; or
 - d. Pack the battery in a salvage packaging in accordance with the provisions of 49 CFR 173.3(c).
7. Would amend 49 CFR 173.306(k) by clarifying that aerosols shipped for recycling or disposal by motor vehicle, containing a limited quantity under the specific conditions provided in 49 CFR 173.306(k), are afforded the applicable exceptions provided for ORM-D materials granted under 49 CFR 173.306(i) and 173.156(b). In addition, the proposed rule would clarify that aerosols meeting the limited quantity requirements of 49 CFR 173.306(k) must be marked with the limited quantity mark in accordance with 49 CFR 172.315(b) and also with the statement, "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS."

Comments Due

Comments on this proposed rule must be received by PHMSA on or before March 24, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-23/pdf/2015-00265.pdf>

I. DOT/PHMSA Hazardous Materials: Adoption of Special Permits (MAP-21) (RRR and HM-233F); Notice of Proposed Rulemaking

On January 30, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (80 FR 5340-5449) that would amend the Hazardous Materials Regulations (HMR) to adopt provisions contained in certain widely-used or long-standing special permits that have an established safety record.

Summary

PHMSA is proposing to amend the HMR by adopting requirements contained in 98 existing special permits (SP). This proposal is based on a review of all active SPs as of January 1, 2013, in which PHMSA identified 98 SPs containing requirements which appear suitable for adoption into the HMR as regulations of general applicability. Other SPs are not being proposed for adoption into the HMR because PHMSA concluded that they contain requirements which (1) would not have, or are being applied in a manner which would not have, broad applicability; or (2) have already been adopted into the HMR, are covered by authorizations in the HMR, or are being addressed in other rulemakings.

The following Veolia special permits are proposed for adoption into the HMR:

11043
11055
11296
11470
11197

The following Veolia special permits are not proposed for adoption into the HMR:

8451
8445
10247
10442
11624
12102
12448
13179
13481

Comments Due

Comments on this notice of proposed rulemaking must be submitted to PHMSA on or before March 31, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01263.pdf>

J. DOJ/DEA Schedules of Controlled Substances: Removal of Naloxegol from Control; Final Rule

On January 23, 2015, the Department of Justice, Drug Enforcement Agency (DEA) published a final rule (80 FR 3468-3470) removing naloxegol ((5 α ,6 α)-17-allyl-6-((20-hydroxy-3,6,9,12,15,18-hexaoxaicos-1-yl)oxy)-4,5-epoxymorphinon-3,14-diol) and its salts from the schedules of the Controlled Substances Act (CSA).

Summary

Naloxegol, is a polyethylene glycolated derivative of naloxone that is used for the treatment of opioid-induced constipation in adults with chronic non-cancer pain. DEA received a petition from the drug sponsor dated March 22, 2012, requesting that DEA exclude naloxegol as a schedule II controlled substance because it does not have an abuse potential. Based on a consideration of all comments, the scientific and medical evaluation and the recommendation from the Health and Human Services, and

based on DEA's consideration of their eight-factor analysis, DEA has determined that naloxegol does not meet the requirements for inclusion in any control schedule and is removed from control under the Controlled Substances Act.

Effective Date

Naloxegol was removed from the Schedules of Controlled Substances on the date of publication of this final rule, January 23, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-23/pdf/2015-01172.pdf>

K. DOJ/DEA Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids into Schedule I; Final Order

On January 30, 2015, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (80 FR 5042-5047) to temporarily schedule 3 synthetic cannabinoids into schedule I of the Controlled Substances Act (CSA).

Summary

Synthetic cannabinoids are chemicals synthesized in laboratories that mimic the biological effects of delta-9-tetrahydrocannabinol (THC). Synthetic cannabinoids have pharmacological effects similar to the schedule I hallucinogen THC and other temporarily and permanently controlled schedule I substances. These three synthetic cannabinoids have no known medical use in the United States and evidence indicates that these substances are currently being abused and therefore DEA is publishing this final order subjecting these three synthetic cannabinoids to the regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule I Controlled Substances. The three synthetic cannabinoids are:

1. *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide ("AB-CHMINACA")
2. *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide ("AB-PINACA")
3. [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalene-1-yl)methanone ("THJ-2201")

Effective Date

This final order became effective on the date of publication, January 30, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01776.pdf>