



## VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - April 2015

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**A. EPA Response to Vacatur of the Comparable Fuels Rule and the Gasification Rule; Final Rule**

On April 8, 2015, the Environmental Protection Agency (EPA) published a final rule (80 FR 18777-18780) amending the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations by removing the comparable fuels exclusions in 40 CFR 261.4(a)(16) and 40 CFR 261.38 and the gasification exclusion in 40 CFR 261.4(a)(12)(i).

**Impact on Generators Previously Utilizing the Comparable Fuels Exclusion**

As a result of this rule change wastes previously managed as comparable fuels must now be managed as hazardous wastes. In addition, generators that previously managed a waste as a comparable fuel must now secure off-site disposal or treatment of those wastes at a permitted hazardous waste treatment facility or if they intend to continue to burn the hazardous waste fuels on-site the generator is required to obtain applicable hazardous waste treatment permits (e.g., incineration and storage permits).

**Background**

On June 27, 2014, the United States Court of Appeals for the District of Columbia Circuit vacated the comparable fuels and gasification exclusions. In the decision, the court stated that the unambiguous language of Section 3004(q) of the Solid Waste Disposal Act of 1970 requires that fuels produced from hazardous wastes must remain classified as hazardous wastes. Section 3004(q) states that EPA “shall” promulgate regulations as “may” be necessary to protect human health and the environment from the production of fuels from “any” materials identified as a hazardous waste under RCRA.

On November 3, 2014, the court granted EPA’s motion to stay the issuance of the vacatur of the comparable fuels and gasification exclusions until March 30, 2014, in order to allow affected facilities time to come into compliance with the hazardous waste regulations.

**Summary**

On March 30, 2015, the Court issued its mandate making the vacatur of the comparable fuels and gasification exclusions effective. The court’s mandate reinstates the regulatory status of the materials as if the vacated rules (exclusions) never existed. This requires the wastes to be managed as hazardous wastes in compliance with the generation, transportation, treatment, storage, and/or disposal of hazardous wastes after March 30, 2015.

**COMPARABLE FUELS EXCLUSION**

EPA promulgated the Comparable Fuels Exclusion in 1998. The exclusion provided that fuels made from hazardous wastes were excluded from the RCRA definition of solid waste if the materials/wastes were sufficiently comparable to commercial fossil fuels for which they were substituted with respect to levels of hazardous constituents and physical properties such as viscosity and heating value. EPA found that the comparable fuels would pose no greater risk than commercial fuels when burned, and could be classified as non-waste fuels rather than as solid and hazardous waste fuels.

**GASIFICATION EXCLUSION**

In 2008, EPA promulgated the gasification exclusion that determined that oil-bearing hazardous secondary materials were excluded from the definition of solid waste and the hazardous waste rules if they were inserted into a gasification unit located at a petroleum refinery to produce synthesis gas.

**APPLICABILITY**

EPA has identified 31 facilities that appear to be managing previously-excluded comparable fuels but NO facilities currently operating under the gasification exclusion.

### **Effective Date**

The vacatur of the comparable fuels and gasification exclusions became effective on April 1, 2015. The amendments of the hazardous waste regulations to remove the exclusions became effective on April 8, 2015.

### **Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-08/pdf/2015-07992.pdf>

## **B. EPA Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes: a Guidance Manual; Final**

On April 2, 2015, EPA published the final revised version of the “Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes” guidance manual (WAP Guidance Manual).

### **Summary**

The purpose of the WAP Guidance Manual is to assist states, the EPA, and the regulated community with the requirements of waste analysis and waste analysis plans under the Resource Conservation and Recovery Act (RCRA). EPA believes that the WAP Guidance Manual will be especially helpful to RCRA treatment, storage, and disposal facilities in the development, implementation, and evaluation of waste analysis plans.

The initial WAP Guidance Manual was issued in 1994. Draft revised guidance manuals were distributed for review and comment on March 1, 2013 and July 10, 2014. EPA evaluated over 40 comment submissions and 500 suggestions from TSDFs, regional and state permit writers, trade associations, and environmental groups in developing the final guidance.

Revisions in the final WAP Guidance Manual include: a greater use of testing when handling wastes; an expanded discussion on how to integrate Data Quality Objectives into sampling and analysis; new waste analysis plan examples have been added; and changes to the federal RCRA program including regulations and guidance that have been issued since 1994.

### **Link**

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

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

## **C. EPA Guidelines for Evaluating and Adjusting the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA; Draft Guidance**

On April 29, 2015, EPA published draft guidance titled “Guidelines for Evaluating and Adjusting the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA.”

### **Summary**

The draft guidance document is developed to provide guidance to assist regulators in evaluating the length of the post-closure care period for hazardous waste disposal facilities subject to Subtitle C of RCRA and in determining whether it should be adjusted. The guidance would also provide information

to assist facility owners and operators in preparing documentation to support a decision to adjust the post-closure care period.

EPA is developing this guidance because many facilities are approaching the end of their 30-year post-closure care period established in RCRA permits or post-closure plans. The draft guidance recommends criteria for consideration to assist states and EPA in determining whether to adjust the length of post-closure care based on currently available unit-specific information while ensuring that human health and the environment will be adequately protected.

#### **Comments Due**

Comments on this draft guidance must be submitted to EPA by June 30, 2015.

#### **Link**

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

[http://www.epa.gov/epawaste/hazard/tsd/td/ldu/pdf/post\\_closr\\_gd.pdf](http://www.epa.gov/epawaste/hazard/tsd/td/ldu/pdf/post_closr_gd.pdf)

#### **D. EPA Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Final Rule**

On April 17, 2015, EPA published a final rule (80 FR 21301-21501) regulating the disposal of coal combustion residuals (CCR) as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

#### **Summary**

In this final rule EPA is finalizing national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring, corrective action, closure requirements, post-closure care, recordkeeping, notification, and internet posting requirements.

The rule requires any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving CCR and either retrofit or close. It also requires the closure of any CCR landfill or CCR surface impoundment that cannot meet the applicable performance criteria for location restrictions or structural integrity.

CCR surface impoundments that do not receive CCR after the effective date of this rule, but still contain water and CCR will be subject to all applicable regulatory requirements unless the owner or operator of the facility dewateres and installs a final cover system within 3 years of the publication of this final rule.

#### **Effective Date**

This final rule will become effective on October 14, 2015.

#### **Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-17/pdf/2015-00257.pdf>

**E. DOT/PHMSA Hazardous Materials: Emergency Response Information Requirements; Notice**

On April 23, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice (80 FR 22781-22782) reminding hazardous materials shippers and carriers of their responsibility to ensure that current, accurate, and timely emergency response information is immediately available to emergency response officials for shipments of hazardous materials.

**Current Requirements**

With limited exceptions, the hazardous materials regulations (HMR) require shipments of hazardous materials to be accompanied by shipping papers and other documentation designed to communicate to transport workers and emergency responders the hazards associated with a specific shipment. This information must include the immediate hazard to health; risks of fire or explosion; immediate precautions to be taken in the event of an accident; immediate methods for handling fires; initial methods for handling spills or leaks in the absence of fire; and preliminary first aid measures. The information must be in writing, in English, and presented on a shipping paper or related shipping document. The offeror of a hazardous material is responsible for ensuring the emergency response information is current, correct, and accurate. Re-offerors are permitted to rely on previous data provided they take no intermediate action, such as blending or mixing the material.

49 CFR 172.600(b) of the HMR requires persons who offer for transportation, accept for transportation, transfer, or otherwise handle hazardous materials during transportation to provide emergency response information including an emergency response telephone number. Therefore, the responsibility to provide emergency response information is not solely that of an offeror, but is a shared responsibility by those who offer, accept, transfer, or otherwise handle hazardous materials during transportation. A current safety data sheet (SDS) that includes accurate emergency response information for the product being shipped is one form of information that may be used, but an SDS is not required.

49 CFR 172.602(a)(1) requires that the emergency response information contain the basic description and technical name of the hazardous material as required by 49 CFR 172.202 and 172.203(k). 49 CFR 172.602(b)(3) requires that the emergency response information be presented on (i) a shipping paper; (ii) in a document that includes both the basic description and technical name of the hazardous material (e.g., SDS); or (iii) related to the information on a shipping paper in a separate document (e.g., an emergency response guidebook) in a manner that cross references the description of the hazardous material on the shipping paper with the emergency response information contained in the document.

Emergency response information, including the emergency response telephone number, must be accessible and immediately available for use. The emergency response telephone number must be monitored at all times the hazardous material is in transportation.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/2015-09436.pdf>

**F. DOT/FRA/PHMSA Hazardous Materials: Information Requirements Related to the Transportation of Trains Carrying Specified Volumes of Flammable Liquids; Notice of Safety Advisory**

On April 23, 2015, the Department of Transportation, Federal Railroad Administration (FRA), and Pipeline and Hazardous Materials Safety Administration (PHMSA) published a joint safety advisory (80 FR 22778-22779) reminding railroads operating a “high hazard flammable train” (HHFT) and offerors of Class 3 flammable liquids transported on HHFTs that certain information may be required by FRA and/or PHMSA during an investigation immediately following an accident.

## Summary

Due to recent derailments involving HHFTs FRA and PHMSA are notifying railroads and offerors of the agency's investigations that occur following HHFT accidents and the information that may be required to be provided during the investigation.

A "high hazard flammable train" (HHFT) is defined as "a train comprised of 20 or more loaded tank cards of a Class 3 flammable liquid in a continuous block, or a train with 35 or more loaded tanks cards of a Class 3 flammable liquid across the entire train."

Following is some of the information that FRA and/or PHMSA may request during an investigation:

1. Train number, locomotive(s), end-of-train device information, number and position of tank cars in the train, tank car reporting marks, and tank car specifications;
2. Waybill information;
3. The Safety Data Sheet(s) or other documents (e.g., hazardous waste manifests) used for emergency response;
4. Results of any product testing that was used to characterize the Class 3 flammable liquid for transportation;
5. Date of acceptance ;
6. The type of flammable liquid and name and location of the company extracting the material;
7. Name and location of the company that owns and operates the terminal or loading facility that loaded the product for rail transportation; and
8. Name of the Railroad(s) handling the tank car(s) at any time from the point of origin to destination and a timeline of handling changes between railroads.

## Link

The link below will allow you to view/print the joint safety advisory.

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/2015-09437.pdf>

## G. DOT Use of Electronic Chain of Custody and Control Form in DOT-Regulated Drug Testing Programs; Final Rule

On April 13, 2015, the Department of Transportation (DOT) published a final rule (80 FR 19551-19553) amending their regulations to incorporate changes to the Substance Abuse and Mental Health Services Administration's (SAMHSA) chain of custody and control form recently approved by the Office of Management and Budget (OMB).

## Summary

This final rule allows employers, collectors, laboratories, and Medical Review Officers to use the electronic version of the Federal Drug Testing Custody and Control Form (eCCF) in the DOT-regulated drug testing program. Employers and their service agents can begin using the eCCF only when the employer's laboratory has been approved by the Department of Health and Human Services National Laboratory Certification Program (NLCP).

To ensure that the DOT regulations conform to SAMHSA's approved chain of custody and control procedures, the DOT is issuing this final rule to expand the current definition of the CCF in 49 CFR 40.3 to include all versions of the CCF approved by OMB. DOT is amending 49 CFR 40.45 to explain that the 5-part form can be a paper form or an approved electronic form, as long as the employer ensures that security and confidentiality concerns are addressed. DOT is also amending 49 CFR 40.73 to require entities using an eCCF to follow the eCCF procedures approved by SAMHSA through the NLCP.

**Effective Date**

This final rule became effective on the date of publication, April 13, 2015.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-13/pdf/2015-08256.pdf>

**H. DOT/FMCSA Civil Penalties Inflation Adjustments; Final Rule**

On April 3, 2015, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (80 FR 18146-18158) adjusting the civil penalty amounts assessed to violators of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs).

**Summary**

The amount of the civil penalties have been adjusted to account for inflation as directed by the Adjustment Act, as amended by the Debt Collection Improvement Act of 1996. Most civil penalties were last adjusted for inflation in 2007 and some have not been adjusted since 2003. This final rule also eliminates inconsistencies between regulatory language in Appendices A and B of 49 U.S.C. Part 386 and other parts of the FMCSRs by removing the penalty amounts from the regulatory language and listing all penalty amounts in the appendices only.

A 1.30 inflation factor was used to adjust penalties that were adjusted in 2003 and an inflation factor of 1.14 was used for those adjusted in 2007. Penalties that were adjusted in 2011 and 2012 were not recalculated at this time.

**Effective Date**

The civil penalty adjustments will become effective on June 2, 2015.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-03/pdf/2015-07701.pdf>

**I. DOT/PHMSA Hazardous Materials: Safety Advisory – Unauthorized Certification of Compressed Gas Cylinders; Safety Advisory Notice**

On April 29, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a safety advisory notice (80 FR 23851-23852) notifying the public that Liberty Industrial Gases and Welding Supplies, Inc. located at 600 Smith Street, Brooklyn, NY 11231, marked DOT-Special Permit high pressure compressed gas cylinders as authorized for hazardous materials transportation without properly testing the cylinders and without authorization.

## Summary

ICC, DOT Specification, and DOT Special Permit cylinders taken to, or received from, Liberty Industrial Gases and Welding Supplies, Inc. from April 1986 through October 2014, may not have been properly tested as prescribed by the hazardous materials regulations (HMR). These cylinders should be considered unsafe and not authorized for the filling of hazardous materials unless the cylinder is first tested by an individual or company authorized to requalify DOT-Specification and DOT Special Permit cylinders.

A cylinder requalification consisting of a visual inspection and a hydrostatic test, conducted as prescribed in the HMR in 49 CFR 173.301, is used to verify the structural integrity of a cylinder. If the requalification is not performed in accordance with the regulations, a cylinder with compromised structural integrity may not be detected and may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from the rupture of a cylinder. Investigators from PHMSA's Office of Hazardous Materials Safety (OHMS) recently conducted a compliance inspection of Liberty Industrial Gases and Welding Supplies Inc. after the company self-reported the improper marking of cylinders.

As a result of the inspection, PHMSA determined that Liberty Industrial Gases and Welding Supplies, Inc. marked an unknown number of high pressure compressed gas cylinders with unauthorized markings and certified an unknown number of high-pressure compressed gas cylinders as being properly requalified when it had not conducted the required testing. Evidence suggests that Liberty Industrial Gases and Welding Supplies, Inc. marked Requalifier Identification Number (RIN) A890 on these cylinders. However, Liberty Industrial Gases and Welding Supplies, Inc. does not hold a RIN approval authorizing it to requalify cylinders. RIN A890 is issued by PHMSA to another company, Hi Pressure Technologies, located in Newark, NJ. Therefore, cylinders serviced by the approved RIN holder, Hi Pressure Technologies, are NOT subject to this notice.

Only cylinders serviced and approved by Liberty Industrial Gases and Welding Supplies, Inc. bearing these markings are affected.

## Links

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-29/pdf/2015-09937.pdf>

The link below will allow you to view/print a list of authorized cylinder requalifiers.

<http://www.phmsa.dot.gov/hazmat/regs/spa/approvals/cylinders>

## J. DOT/PHMSA Clarification on Policy for Additional Name Requests Regarding Fireworks; Clarification

On April 2, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a clarification (80 FR 17706-17707) of the requirements for assigning Explosives (EX) Approval or Fireworks Certification (FC) numbers and revising the application-approval procedures for previously approved firework designs.

## Summary

In this publication, PHMSA is clarifying that it is not required or necessary for a firework manufacturer, or designated agent, to submit a new EX Approval application each time an additional item name is associated with a firework design type (described under UN0336, UN0335, and UN0431). PHMSA will no longer process additional item name EX Approval applications.



### **Guidelines for Adding or Changing a Firework Product's Name**

In accordance with 49 CFR 172.320, the EX-number, FC-number, product code or national stock number must be either marked on the package for each Class 1 material contained therein or on the shipping paper in association with the shipping description as described in 49 CFR 172.202(a). Product codes and national stock numbers must be traceable to the specific EX-number assigned by the Associate Administrator or FC-number assigned by a DOT-approved Firework Certification Agency (FCA).

For manufacturers of consumer fireworks that wish to revise or update the product name, the HMRs do not prohibit the change. In fact, the manufacturer may print, in any format desired, a new item name on any surface of the package. It is a common industry practice to print the EX or FC number on the fireworks device itself. PHMSA encourages industry to continue this practice as an additional means of identifying the product.

A change to the product name (not the proper shipping name) has no bearing on the safety of the firework, the original classification of the firework, or regulatory compliance. When applying for new fireworks applications, manufacturers may wish to simplify their procedures by using product codes or item numbers in accordance with Appendix D, Note 2 in the American Pyrotechnics Association, Standard 87-1 (December 1, 2001 Edition).

### **Effective Date**

Beginning on April 2, 2015, PHMSA will no longer process additional item name EX Approval applications for fireworks.

### **Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07425.pdf>

## **K. DOT/FMCSA Beyond Compliance Program; Notice and Request for Public Comment**

On April 23, 2015, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (80 FR 22770-22772) requesting comments on specific questions and any supporting data on the potential development of a Beyond Compliance program.

### **Summary**

Beyond Compliance would include voluntary programs implemented by motor carriers that exceed regulatory requirements, and improve the safety of commercial motor vehicles and drivers operating on the Nations' roadways by reducing the number and severity of crashes.

FMCSA and motor carriers have invested millions of dollars in research, development, and implementation of strategies and technologies to reduce truck and bus crashes. FMCSA is evaluating the impacts of considering a company's proactive voluntary implementation of state-of-the-art best practices and technologies when evaluating the carrier's safety.

FMCSA is seeking comment on the following questions:

1. What voluntary technologies or safety program best practices would be appropriate for a Beyond Compliance Program?
2. What safety performance metrics should be used to evaluate the success of voluntarily implemented technologies or safety program best practices?

3. What incentives would encourage motor carriers to invest in technologies and best practices programs?
  - a. Credit on appropriate Safety Measurement System (SMS) scores (e.g., credit in Driver Fitness for use of an employer notification system)?
  - b. Credit on Inspection Selection System (ISS) scores?
  - c. Reduction in roadside inspection frequency?
  - d. Other options?
4. What events should cause the incentives to be removed?
  - a. If safety goals for the carrier are not consistently achieved, what is the benefit to the motoring public?
5. Should this program be developed by the private sector like PrePass, ISO 9000, or Canada's Partners in Compliance (PIC)?

**Comments Due**

Comments must be submitted to FMCSA on or before June 22, 2015.

**Link**

The link below will allow you to view/print this notice and request for comments.

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/2015-09463.pdf>

**L. OSHA New Website Compares and Contrasts State vs. Federal OSHA Regulations in the 25 States with Federally Authorized Programs**

On April 1, 2015, the Public Citizen and the Public Health Law Research (PHLR) program from the Robert Wood Johnson Foundation released a “comprehensive database” on a website that compares and contrasts federal and state Occupational Safety and Health Administration (OSHA) regulations. There are currently 25 states and 2 U.S. territories that have federally approved state OSHA plans.

The only regulations and laws that are referenced on the website are those that are different or have not been adopted identically from federal OSHA.

**Link**

The link below provides access to the website.

<http://lawatlas.org/query?dataset=state-occupational-safety-and-health-laws>