



## VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - April 2016

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No Health and Safety Updates for April 2016

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**A. EPA Underground Storage Tanks and Piping Installed or Replaced After April 11, 2016 must be Secondarily Contained and Interstitially Monitored**

Beginning on April 11, 2016 owners and operators must install secondarily contained underground storage tanks and piping when installing or replacing underground storage tanks and piping.

**Background**

On July 15, 2015, the Environmental Protection Agency (EPA) published a final rule (80 FR 41565-41683) revising and strengthening the 1988 underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment. The effective date of the requirement to install secondarily contained tanks and piping when installing or replacing tanks and piping did not become effective until April 11, 2016.

**Summary**

In addition to secondarily contained tanks and piping, interstitial monitoring must also be installed on new or replaced tanks and piping. Included below is additional information regarding this requirement:

1. Secondary Containment – means that tank and piping have an inner and outer barrier with an interstitial space that is monitored for leaks and includes containment sumps where those sumps are used for interstitial monitoring of piping.
2. Replaced tank - means to remove a tank and install another tank.
3. Replaced piping - means to remove 50 percent or more of piping and install other piping. Piping does not include the connectors used to connect the piping to the tank or dispenser. This definition applies to each piping run connected to a single tank. Owners and operators of tanks with multiple piping runs must apply this definition independently to each piping run.

**Effective Date**

These UST requirements became effective on April 11, 2016.

**Link**

The link below will allow you to view EPA's UST website that includes a summary of the secondary containment requirements.

<https://www.epa.gov/ust/secondary-containment-and-under-dispenser-containment-2015-requirements>

**B. EPA Hazardous Waste Management System; Tentative Denial of Petition to Revise the RCRA Corrosivity Hazardous Characteristic; Notification**

On April 11, 2016, the Environmental Protection Agency (EPA) published a notification of tentative denial of petition for rulemaking (81 FR 21295-21308) tentatively denying a petition to revise the Resource Conservation and Recovery (RCRA) corrosivity hazardous waste characteristic regulation.

**Background**

On September 8, 2011, EPA received a rulemaking petition seeking revisions to the RCRA hazardous waste corrosivity characteristic definition in 40 CFR 261.22. The petition seeks two changes to the 40 CFR 261.22(a) definition of a corrosive hazardous waste:

1. Reduction of the pH regulatory value for alkaline corrosive hazardous wastes from the current standard of pH 12.5 to pH 11.5; and

2. Expansion of the scope of the RCRA hazardous waste corrosivity definition to include non-aqueous wastes.

### **Summary**

Following EPA's review of this topic, EPA is tentatively denying the petition because the materials submitted in support of the petition fail to demonstrate that the requested regulatory revisions are warranted. During EPA's review additional materials that EPA identified as relevant to the petition were also reviewed and also did not demonstrate to EPA that any change to the corrosivity characteristic regulation is warranted at this time.

EPA is requesting public comment on this tentative denial and the questions raised in the petition.

### **Comments Due**

Comments must be received by EPA on or before June 10, 2016.

### **Link**

The link below will allow you to view/print the notification of tentative denial of petition for rulemaking.

<https://www.gpo.gov/fdsys/pkg/FR-2016-04-11/pdf/2016-08278.pdf>

## **C. EPA Support Briefs Filed in Definition of Solid Waste Court Case**

On April 18, 2016, intervenors briefs in response to challenges to EPA's 2015 Definition of Solid Waste Final Rule were filed with the U.S. Court of Appeals for the District of Columbia Circuit (Court) by a coalition of industry intervenors. The intervenors included the American Chemistry Council, American Coke and Chemicals Institute, Metals Industry Recycling Coalition, and Utilities Solid Waste Activities Group), environmental groups, and a hazardous waste industry group.

### **Summary**

The industry intervenors, in their brief, challenge the legitimacy criteria and the presumption that secondary materials sent off-site are discarded. The industry intervenors support the pre-2008 exclusions and argue that the environmental groups lack standing on this issue.

The environmental groups argue that the EPA properly used its authority even though they contend that the 2015 Definition of Solid Waste final rule does not go far enough to ensure protection of human health and the environment. The environmental groups support EPA's third-party transfer position but challenged the legitimacy criteria and other provisions in the final rule.

EPA's response brief relies heavily on the recent non-hazardous secondary materials court decision where the court upheld the legitimacy criteria in that rule.

### **Reply Briefs**

Reply briefs must be submitted to the Court by May 18, 2016.

### **Oral Arguments**

Oral arguments have not yet been scheduled.

**D. DOT/PHMSA Hazardous Materials: Incorporation by Reference Edition Update for the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Transportation Systems for Liquids and Slurries: Pressure Piping Code; Direct Final Rule**

On April 29, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a direct final rule (81 FR 25613-25618) incorporating by reference the most recent editions of the ASME Boiler and Pressure Vessel Code.

**Summary**

The Boiler and Pressure Vessel Code enables nurse tank manufacturers and other Department of Transportation (DOT) and UN Specification packaging manufacturers to use current technology, materials, and practices. The incorporation of the most recent edition of the ASME Code improves clarity, consistency, accuracy, reduces unnecessary burdens on the regulated community, and will provide, at a minimum, an equivalent level of safety for non-specification (nurse tanks) and specification tanks regulated under the Hazardous Materials Regulations (HMR). This final rule replaces the 1998 Edition of ASME Boiler and Pressure Vessel Code Sections with the current 2015 Edition of the Code Sections:

1. Section II – Materials – Part A – Ferrous Materials Specifications
2. Section II – Materials – Part B – Non-Ferrous Materials Specifications
3. Section V – Non-Destructive Examination
4. Section VIII – Rules for Construction of Pressure Vessels Division 1
5. Section IX – Welding, Brazing, and Fusing Qualifications

**Effective Date**

This direct final rule will become effective on June 28, 2016, unless adverse comment is received by PHMSA on or before May 31, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-04-29/pdf/2016-10027.pdf>

**E. DOT/FMCSA Beyond Compliance Program; Notice and Request for Comment**

On April 20, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (81 FR 23351-23354) describing FMCSA's proposed Beyond Compliance program.

**Background**

On December 4, 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act which requires FMCSA to implement a "Beyond Compliance" program no later than 18 months after the enactment of the Act. The FAST Act requires FMCSA to allow recognition, including credit or an improved Safety Measurement System (SMS) percentile for a motor carrier that:

1. Installs advanced safety equipment;
2. Uses enhanced driver fitness measures;
3. Adopts fleet safety management tools, technologies, and programs; or
4. Satisfies other standards determined appropriate by the Administrator.

The program must be administered by either incorporating a methodology into the Compliance, Safety, Accountability (CSA) program or establishing a safety Behavior Analysis Safety Improvement Category (BASIC) in SMS.

FMCSA held two public listening sessions in January 2016 to solicit information on the potential benefits and feasibility of voluntary compliance and ways to credit transporters who initiate and establish programs to promote safety beyond the standards established in FMCSA regulations. The information collected during the listening sessions was considered by FMCSA in the development of the proposed Beyond Compliance program.

### **Summary**

Below is a description of FMCSA's proposal for the Beyond Compliance program.

1. FMCSA proposes to create a new BASIC in SMS. The Beyond Compliance BASIC would appear when a motor carrier is approved and participating in the Beyond Compliance program.
2. A motor carrier would be eligible to apply for the Beyond Compliance program if the following criteria were met:
  - a. The motor carrier did not have a Conditional or Unsatisfactory safety rating;
  - b. The motor carrier did not have a BASIC over intervention thresholds at the time of the application;
  - c. The proposed technology or program must be applied to the company's population of vehicles or drivers to adequately achieve the performance goal and improve safety;
  - d. The motor carrier must be an interstate carrier; and
  - e. The motor carrier must have graduated from the new entrant monitoring period.
3. Petitions for technologies and safety programs for consideration in the Beyond Compliance program would be submitted using an on-line tool that will be developed by FMCSA. The following information would need to be submitted, at a minimum:
  - a. USDOT number;
  - b. Company named and doing business as (DBA) names;
  - c. Company official name, title, contact information;
  - d. Proposed technology or program;
  - e. Coverage (drivers and/or fleet);
  - f. Baseline safety information;
  - g. Expected improvement;
  - h. Estimated cost;
  - i. Installation timeframe; and
  - j. Self-certification.

The on-line system would also allow requestors to submit documentation in support of the request.

4. Within 6 months of application approval, the approved program or technology would be evaluated to determine the impacts on the baseline performance measures. This monitoring would be conducted by a third-party contractor approved through a petition review process.
5. Recurring monitoring, at least annually, would be conducted by the third-party contractor.
6. A motor carrier would be immediately removed from the program if it received a final Conditional or Unsatisfactory safety rating; was declared an imminent hazard; or received an out of service or revocation notice from FMCSA.

### **Listening Sessions**

FMCSA held additional listening sessions in Louisville, KY on April 1, 2016 and Chicago, IL on April 25, 2016.

### **Comments Due**

Comments on the proposed Beyond Compliance program must be received by FMCSA on or before June 20, 2016.

**Link**

The link below will allow you to view/print the notice and request for comment for the proposed Beyond Compliance program.

<https://www.gpo.gov/fdsys/pkg/FR-2016-04-20/pdf/2016-09118.pdf>

**F. DOJ/DEA Schedules of Controlled Substances: Placement of AH-7921 into Schedule I; Final Order**

On April 14, 2016, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (81 FR 22023-22025) placing the substance AH-7921 (3,4-dichloro-*N*-[(1dimethyl lamino)cyclohexymethyl]benzamide), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, into schedule I of the Controlled Substances Act.

**Summary**

AH-7921 is a  $\mu$ -opioid receptor agonist with analgesic activity similar to that of morphine. In animals, withdrawal symptoms are observed following repeated administration of AH-7921. Usage of AH-7921 for eliciting euphoria and relaxation have been documented along with documented reports of overdoses and deaths from AH-7921 usage. The DEA is not aware of any commercial or medical uses for AH-7921. Therefore, DEA has determined that AH-7921 should be placed into schedule I of the Controlled Substances Act (CSA).

**Effective Date**

This final order will become effective on May 16, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-04-14/pdf/2016-08566.pdf>