VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - May 2016

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A. EPA National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations: Action Denying a Petition for Reconsideration

On May 16, 2016, the Environmental Protection Agency (EPA) published a notice (81 FR 30182-30183) denying a petition for reconsideration for the equipment leak provisions for connectors in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations (OSWRO) final rule that was published on March 18, 2015.

Summary

On March 18, 2015, EPA published a final rule (80 FR 14248) amending the OSWRO NESHAP revising provisions for emissions during startup, shutdown, and malfunction; adding requirements for electronic reporting of performance testing; adding monitoring requirements for pressure relief devices (PRDs); revising routine maintenance provisions; clarifying provisions for open-ended valves and lines and for some performance test methods and procedures.

In response, Eastman Chemical Company and the American Chemical Council submitted a petition for reconsideration for: (1) the equipment leak provisions for connectors and (2) the requirement to monitor PRDs on portable containers.

EPA granted reconsideration for the PRD monitoring requirement on February 8, 2016, but denied the reconsideration of the equipment leak provisions for connectors.

EPA sent letters on May 5, 2016 to Eastman Chemical Company and the American Chemical Council explaining the reasons for the denial.

Link

The link below will allow you to view/print the notice denying the petition for reconsideration of the equipment leak provisions for connectors.

https://www.gpo.gov/fdsys/pkg/FR-2016-05-16/pdf/2016-11252.pdf

B. EPA National Emission Standards for Hazardous Air Pollutants: Site Remediation; Proposed Rule and Request for Public Comment

On May 13, 2016, EPA published a proposed rule (81 FR 29821-29828) that would remove exemptions from the Site Remediation: National Emission Standards for Hazardous Air Pollutions (NESHAP) for site remediation activities performed under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or Resource Conservation and Recovery Act (RCRA) corrective action or other RCRA order.

Background

On October 8, 2003, EPA published a final rule (68 FR 58172) exempting site remediation work performed under CERCLA and RCRA corrective actions or other RCRA order from the Site Remediation NESHAP. On December 8, 2003, the Sierra Club, the Blue Ridge Environmental Defense League, and the Concerned Citizens for Nuclear Safety submitted a reconsideration petition to EPA stating that EPA (1) lacked the authority to exempt site remediation activities from NESHAP requirements and (2) had a duty to set standards for each hazardous air pollutant (HAP) emitted from a source category. On March 25, 2015, EPA issued a letter to the petitioners granting reconsideration on the issues raised in the petition and stating that the Agency would issue a proposed rule.

Summary

In this proposed rule EPA would remove 40 CFR 63.7881(b)(2) and (3), the provisions that exempt site remediation work conducted under CERCLA or RCRA from the Site Remediation Rule requirements. The site remediation requirements include emission limitations and work practice standards for HAPs emitted from site remediation activities. The site remediation rule applies to remediation materials that contain 1 megagram per year or more of an organic HAP listed in Table 1 of the Site Remediation Rule. Emission controls would be required for process vents, remediation material management units (tanks, containers, surface impoundments, oil/water separators, organic/water separators, and drain systems), and equipment leaks.

The proposed rule would also remove 40 CFR 63.7881(a)(2) that required an affected site remediation be co-located on a facility that is regulated by a different NESHAP. This would ensure that site remediation work locations that are major sources of HAPs would be covered by the site remediation rule without considering the co-located facility HAPs.

Comments Due

Comments on this proposed rule must be submitted to EPA by June 27, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-13/pdf/2016-10988.pdf

C. EPA National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates; Proposed Rule

On May 18, 2016, EPA published a proposed rule (81 FR 31343-31374) that would revise the National Pollutant Discharge Elimination System regulations to improve permit documentation, transparency, and oversight; clarify existing regulations; and improve outdated provisions.

Summary

This proposed rule includes 15 topics grouped into 5 major categories of changes. These categories are: permit application requirements; the water quality based permitting process; permit objection, documentation, and process efficiencies; vessels exclusion; and CWA Section 401 certification process. The proposed topics for revision are:

1. Permit Application Requirements
    a. Purpose and Scope (40 CFR 122.1)
    b. NPDES Program Definition including (40 CFR 122.2)
        i. Pesticide Applications to Waters of the United States
        ii. Proposed Permit
        iii. New Discharger
        iv. Whole Effluent Toxicity Definition
    c. Changes to Existing Application Requirements (40 CFR 122.21)
2. Water Quality-Based Permitting Process
    a. Anti-Degradation Reference (40 CFR 122.44(d))
    b. Dilution Allowances (40 CFR 122.44(d))
    c. Reasonable Potential Determinations for New Discharges (40 CFR 122.44(d))
    d. Best Management Practices (40 CFR 122.44(k))
    e. Anti-Backsliding (40 CFR 122.44(l))
    f. Design Flow for Publicly Owned Treatment Works (40 CFR 122.45(b))

3. Permit Objection, Documentation and Process Efficiencies
    a. Objection to Administratively Continued Permits (40 CFR 123.44)
    b. Public Notice Requirements (40 CFR 124.10(c))
    c. Fact Sheet Requirements (40 CFR 124.56)
    d. Deletion of 40 CFR 125.3(a)(1)(ii)
4. Vessels Exclusion (40 CFR 122.3(a))
5. CWA Section 401 Certification Process (40 CFR 124.55(b))

Comments Due

Comments on this proposed rule must be received by EPA on or before July 18, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-18/pdf/2016-11265.pdf

D. DOT/PHMSA Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans; Correction Notice

On May 27, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a correction notice (81 FR 33602-33604) reinstating three entries in the 49 CFR 172.101 Hazardous Materials Table.

Summary

This correction notice reinstates the following entries into the 49 CFR 172.101 Hazardous Materials Table:

1. *Cyanuric triazide* – Forbidden
2. *Dinitrosobenzylamidine and salts of (dry)* – Forbidden
3. *Power device, explosive, see* Cartridges, power Device

Effective Date

These corrections became effective on the date of publication, May 27, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-12598.pdf

E. OSHA Improve Tracking of Workplace Injuries and Illnesses; Final Rule

On May 12, 2016, the Occupational Safety and Health Administration (OSHA) published a final rule (81 FR 29623-29694) revising the Recording and Reporting Occupational Injuries and Illnesses regulations and amending requirements on how employers inform employees to report work-related injuries and illnesses.

Summary

This final rule amends OSHA's recordkeeping regulations to require certain facilities to electronically submit injury and illness information to OSHA. The final rule requires:

1. Establishments with 250 or more employees must electronically submit information from their 29 CFR 1904 recordkeeping forms (Form 300, 300A, and 301) to OSHA annually.
2. Establishments with more than 20 employees but less than 250 employees in designated industries (29 CFR 1904, Subpart E, Appendix A) including NAICS Code 5622 (Waste Treatment and Disposal), NAICS Code 5629 (Remediation and other Waste Management), and NAICS Code 23 (Construction) must electronically submit information from their 29 CFR 1904 annual summary (Form 300A) annually.
3. Any establishment contacted by OSHA requesting electronic submittal of injury and illness data must electronically submit this information to OSHA.

OSHA intends to publish establishment-specific injury and illness data to the public on their website (www.osha.gov).

OSHA also revised their requirements on how to inform employees to report occupational injuries and illnesses (29 CFR 1904.35(a) and (b)). The revisions include:

1. Employers must inform employees of their right to report work-related injuries and illnesses;
2. Clarifies the existing implicit requirement that the companies injury and illness report procedures must be reasonable and not deter or discourage employees from reporting injuries and/or illnesses; and
3. Employers must incorporate the prohibition on retaliation against employees for reporting work-related injuries and illnesses into their program.

OSHA believes that the benefits of these revisions include: increased compliance with OSHA's injury and illness recordkeeping and reporting requirements, increased prevention of injuries and illnesses due to timely reporting of injuries and illnesses electronically to OSHA, and the complete and accurate reporting of work-related injuries and illnesses by employers.

Effective Date

This final rule will become effective on January 1, 2017 with the exception of the requirements for employee involvement (29 CFR 1904.35) and the prohibition against discrimination (29 CFR 1904.36) which become effective on August 10, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-12/pdf/2016-10443.pdf

F. DOJ/DEA Schedules of Controlled Substances: Placement of UR-144, XLR11, and AKB48 into Schedule I; Final Rule

On May 11, 2016, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (81 FR 29142-20145) placing the substances: UR-144 (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone); XLR11 (5-fluoro-UR-144) ([1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone ; and AKB48 (APINACA) (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide) and their salts, isomers, and salts of isomers into schedule I of the Controlled Substances Act (CSA).

Summary

On May 16, 2013, DEA published a final order (78 FR 28735) temporarily placing UR-144, XLR11, and AKB48 into Schedule I of the CSA because these substances are pharmacologically similar to Schedule I substances THC and JWH-018 as well as other synthetic cannabinoids. After consideration of the information presented as a result of public comment, the scientific and medical evaluations and recommendations from the Department of Health and Human Services (HHS), and its eight-factor analysis, the DEA has determined that this evidence shows the potential for abuse of these three substances and this final rule permanently places UR-144, XLR11, and AKB48, their salts, isomers, and salts of isomers under the regulatory controls of Class I Controlled Substances.

Effective Date

This final rule became effective on the date of publication, May 11, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-11204.pdf

G. DOJ/DEA Schedules of Controlled Substances: Placement of Brivaracetam into Schedule V; Interim Final Rule

On May 12, 2016, the Department of Justice, Drug Enforcement Administration (DEA) published an interim final rule (81 FR 29487-29492) placing the substance brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) into schedule V of the Controlled Substances Act (CSA).

Summary

Brivaracetam (BRV) is a new chemical and has not been marketed in the United States or any other country. In humans, BRV is most similar to schedule V substances lacosamide, ezogabine, and pregabalin in producing reverse inhibition caused by negative modulators of gamma aminobutyric acid (GABA) and glycine and inhibits sodium channels. After reviewing all scientific data and medical evaluations and the scheduling recommendation provided by HHS, DEA has determined that: BRV has a low potential for abuse, has a current accepted medical use in the United States, and has limited psychological dependence and does not appear to have physical dependence. Based on these findings DEA has concluded that BRV including its salts warrant control in Schedule V of the CSA.

Effective Date

This interim final rule became effective on May 12, 2016.

Comments Due

Comments on this interim final rule must be received by DEA on or before June 13, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-12/pdf/2016-11245.pdf

H. DOJ/DEA Schedules of Controlled Substances: Temporary Placement of Butyryl Fentanyl and Beta-Hydroxythiofentanyl into Schedule I; Final Order

On May 12, 2016, the Department of Justice, Drug Enforcement Agency (DEA) published a final order (81 FR 29492-29496) temporarily placing the synthetic opioids butyryl fentanyl [*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutyramide also known as *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide] and beta-hydroxythiofentanyl [*N*-[1-[2-hydroxy-2-(thiopen-2-yl)ethyl]piperidin-4-yl]-*N*-phynylpropionamide also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenylpropanamide], and their isomers, esters, ethers, salts and salts of isomers into schedule I of the Controlled Substances Act.

Summary

DEA is aware of at least 40 confirmed fatalities associated with butyryl fentanyl and 7 confirmed fatalities associated with beta-hyrdoxythiofentanyl. The DEA is not aware of any currently accepted medical uses for these substances in the United States. Data and information indicate that these substances have a high potential for abuse, no accepted medical use in the United States and a lack of accepted safety for use under medical supervision. Therefore, DEA believes placing these synthetic opioids, their isomers, esters, ethers, salts and salts of isomers into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Effective Date

This final order became effective on the date of publication, May 12, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-05-12/pdf/2016-11219.pdf