VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - January 2017

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I. DoA/APHIS Plant Pest and Soil Regulations; Update of Provisions; Proposed Rule; Withdrawal and Reproposal

A. EPA Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Final Rule

On January 13, 2017, the Environmental Protection Agency (EPA) published a final rule (82 FR 4594-4705) amending the Risk Management Programs under the Clean Air Act (CAA).

Background

EPA's Risk Management Program regulations (40 CFR Part 68) apply to stationary sources (facilities) that manage specific "regulated substances" in excess of threshold quantities. These facilities are required to assess their potential release impacts, undertake steps to prevent releases, plan for emergency response to releases, and summarize this information in a Risk Management Plan that must be submitted to EPA. The release prevention requirements vary depending on the type of process and increased risk (i.e., Program 1, Program 2, and Program 3).

Summary

The major provisions in this final rule are included below:

1. Accident Prevention Program Revisions

    a. Requires all facilities with Program 2 or 3 processes to conduct a root cause analysis as part of an incident investigation of a catastrophic release or an incident that could have reasonably resulted in a catastrophic release (i.e., near-miss).
    b. Requires all facilities with Program 2 or 3 processes to contract with an independent third-party, or assemble an audit team led by an independent third-party to perform a compliance audit after the facility has a RMP reportable accident.
    c. Owners or operators of facilities with Program 3 processes in NAICS 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) are required to conduct a safer technology and alternatives analysis (STAA) as part of their process hazard analysis (PHA), and to evaluate the practicability of any inherently safer technology (IST) identified.

2. Emergency Response Enhancements

    a. Requires all facilities with Program 2 or 3 processes to coordinate with the local emergency response agencies at least once per year to determine how the source is addressed in the community emergency response plan and to ensure that local response organizations are aware of the regulated substances at the facility.
    b. Owners and operators of facilities with Program 2 or 3 processes must conduct notification exercises annually to ensure that their emergency contact information is correct.
    c. Requires all facilities subject to the emergency response program requirements of subpart E to conduct exercises and tabletop exercises. At a minimum, full field exercises must be conducted at least once every ten years and tabletop exercises must be conducted at least once every three years.

3. Enhanced Availability of Information

    a. Facilities must hold a public meeting for the local community within 90 days of a RMP reportable accident.
    b. A facility must respond to a request for information from the public within 45 days.
    c. The owner or operator of a facility must provide ongoing notification of information elements on a company web site, social media platform, or some other publicly accessible means.

Effective Dates

This final rule would have become effective on March 14, 2017 but EPA published a final rule delaying the effective date of rules published by EPA between October 28, 2016 and January 17, 2017 (item D in this summary). Therefore, the effective date of this final rule is extended until at least March 21, 2017.

Following are implementation dates for certain requirements:

1. The initial coordination with local emergency response agencies must occur within one year of the effective date;
2. Independent audits following incidents or near misses must start being conducted within four years of the effective date;
3. Table top emergency response exercises must begin within four years of the effective date;

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-13/pdf/2016-31426.pdf

B. EPA Methylene Chloride and N-Methylpyrrolidone; Regulation of Certain Uses under TSCA Section 6(a); Proposed Rule

On January 19, 2017, EPA published a proposed rule (82 FR 7464-7533) that would prohibit the use of Methylene Chloride and N-Methylpyrrolidone in most types of commercial paint and coating removal products (paint strippers) under section 6 of the Toxic Substances Control Act (TSCA).

Background

Under TSCA section 6(a), if EPA determines after a risk evaluation has been conducted and that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents the risk. This must be conducted without the consideration of costs or other non-risk factors.

EPA is proposing a determination that the use of methylene chloride and/or NMP in paint and coating removal (paint stripping) presents an unreasonable risk of injury to health.

Methylene Chloride

EPA is proposing to prohibit the manufacture (including import), processing, and distribution in commerce of methylene chloride for all consumer and for most types of commercial paint and coating removal uses. EPA is also proposing to prohibit the use of methylene chloride for commercial paint and coating removal in specified sectors including: painting and decorating, floor refinishing, automotive refinishing, civilian aircraft refinishing, graffiti removal, renovations and contracting, bridge repair and repainting, and marine craft refinishing and repair.

This proposed rule would also require that any paint or coating removal products containing methylene chloride that continue to be distributed must be in containers with a volume no less than 55-gallons, except for formulations specifically manufactured for the Department of Defense, which may be distributed in containers no less than 5-gallons in size.

N-Methylpyrrolidone (NMP)

EPA is proposing two options for the prohibition of NMP.

1. Option 1

   This option would prohibit the manufacture (including import), processing, and distribution in commerce of NMP for all consumer and commercial paint and coating removal products with exemptions for certain coating removal uses that are critical to national security. EPA is also proposing to prohibit the commercial use of NMP for paint and coating removal. The exemptions would include a condition that any exempt paint and coating removal products containing NMP be packaged in containers no less than 5-gallons in size.

2. Option 2

   Option 2 would require reformulation, PPE and labeling requirements.

   a. Manufacturers/processors of paint and coating removal products containing NMP must reformulate their products so that these products do not exceed a maximum of 35 percent NMP by weight, identify gloves that provide effective protection, and provide warning and instruction labels on the products; and
   b. Commercial users of NMP for paint and coating removal would be required to establish a worker protection program for dermal and respiratory protection and not use paint and coating removal products that contain greater than 35 percent NMP by weight.

Comments Due

Comments on this proposed rule must be received by EPA on or before April 19, 2017.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01222.pdf

C. EPA Trichloroethylene (TCE); Regulation of Use in Vapor Degreasing under TSCA Section 6(a); Proposed Rule

On January 19, 2017, EPA published a proposed rule (82 FR 7432-7461) that would prohibit the manufacture (including import), process, and distribution in commerce of Trichloroethylene (TCE) for use in vapor degreasing.

Background

Under TSCA section 6(a), if EPA determines after a risk evaluation has been conducted and that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents the risk. This must be conducted without the consideration of costs or other non-risk factors.

EPA is proposing a determination that the use of TCE in vapor degreasing presents an unreasonable risk of injury to health.

Summary

EPA is proposing to prohibit the manufacture (including import), processing, and distribution in commerce of TCE for use in vapor degreasing; to prohibit the commercial use of TCE in vapor degreasing; and to require manufacturers, processors, and distributors, except for retailers, to provide downstream notification of this prohibition throughout the supply chain (e.g., include this information in a Safety Data Sheet (SDS)), and to maintain records.

Comments Due

Comments on this proposed rule must be submitted to EPA on or before March 20, 2017.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01229.pdf

D. EPA Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency between October 28, 2016 and January 17, 2017

On January 26, 2017, EPA published a final rule (82 FR 8499-8501) delaying the effective date of final regulations published by EPA between October 28, 2016 and January 17, 2017.

Summary

The Assistant to the President and Chief of Staff issued a memorandum on January 20, 2017 titled "Regulatory Freeze Pending Review." This memorandum directed the heads of Executive Departments and Agencies to temporarily postpone for sixty days the effective dates of all regulations that had been published in the Federal Register but had not yet become effective. EPA identified 30 regulations that meet this criteria.

The Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Final Rule published on January 13, 2017 will be impacted by this ruling.

Revised Effective Date

The effective date of this final rule will be delayed from March 14, 2017 to March 21, 2017.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-26/pdf/2017-01822.pdf

E. EPA Guidelines for Evaluating and Adjusting the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of the Resource Conservation and Recovery Act (RCRA); Notice

On December 15, 2016, Barnes Johnson, Director, Office of Resource Conservation and Recovery, issued a memorandum to the RCRA Division Directors, Enforcement Managers, and Regional Counsels to provide guidance to assist regulators in evaluating conditions at hazardous waste disposal facilities subject to Subtitle C of RCRA that are approaching the end of the original 30-year post-closure

care period, and in determining whether the post-closure care period should be adjusted or allowed to end.

Summary

The purpose of these guidelines is to assist regulators in evaluating the conditions at hazardous waste disposal facilities that are approaching the end of their original 30-year post-closure care period to determine if additional post-closure care is necessary to protect human health and the environment.

According to 40 CFR 264.117 the post-closure care period may be modified under certain circumstances provided the modifications are protective of human health and the environment:

1. The post-closure care period may be shortened where "the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure)."
2. The post-closure care period may be extended where "the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate potential for migration of hazardous wastes at levels which may be harmful to human health or the environment)."

The guidance includes "Criteria to Consider for Evaluating the Post-Closure Care Period."

Effective Date

These guidelines became effective on the date of publication, December 15, 2016.

Link

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

https://www.epa.gov/sites/production/files/2017-01/documents/pcc_guidance_508_withdateandletterhead.pdf

F. DOT/FMCSA Unified Registration System; Suspension of Effectiveness; Final Rule; Suspension of Effective Date and Temporary Final Rule

On January 17, 2017, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (82 FR 5292-5318) suspending its regulations requiring existing interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities under FMCSA jurisdiction to submit required registration and biennial update information to FMCSA via a new electronic on-line Unified Registration System (URS).

Summary

This final rule is being issued to further delay the effective (January 14, 2017) and compliance dates of the Unified Registration System final rule (URS 1 final rule), issued on August 23, 2013. The URS 1 final rule was issued to improve the registration process for motor carriers, property brokers, freight forwarders, IEPs, HMSP applicants, and cargo tank facilities to register with FMCSA, and streamline the existing Federal registration processes to ensure the Agency can more efficiently track these entities. FMCSA is extending the implementation date of the final stage of the URS 1 final rule beyond January 14, 2017 because additional time is needed to securely migrate data from multiple legacy platforms into a new central database and to conduct further compatibility testing with its State partners.

By moving the implementation date, FMCSA is providing its State partners more time to develop, update, and verify data connectivity and system reliability. The additional time will also enable the Agency to conduct more thorough training and to implement broader outreach and education activities that will provide for a seamless transition.

Due to numerous revisions and corrections that have been made to the URS 1 final rule, FMCSA, in consultation with the Office of the Federal Register (OFR) is allowing the URS 1 rule to come into effect, immediately suspending it, and replacing it with temporary regulations. FMCSA intends to lift the suspension once the technology to implement URS 1 is complete, and effectively replace the temporary regulations with the URS 1 final rule, as issued on August 23, 2013. FMCSA and the OFR have determined that this procedure will result in a compilation of rules that is relatively easy to understand and follow. The temporary provisions read almost exactly as the regulations in existence on January 13, 2017 (the day before URS 1 becomes effective). The only differences are the "T" notation in their section designation, which denotes them as temporary provisions within the Code of Federal Regulations, and new paragraph designations in some cases, to align with current guidelines for publication in the CFR.

Effective Dates

The effective date of this rule is January 14, 2017.

Petitions for reconsideration must be received by February 16, 2017.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2016-31706.pdf

G. OSHA Occupational Exposure to Beryllium; Final Rule

On January 9, 2017, the Occupational Safety and Health Administration (OSHA) published a final rule (82 FR 2470-2757) amending the standards for occupational exposure to beryllium and beryllium compounds.

Summary

This final rule amends the standards for occupational exposure to beryllium and beryllium compounds that were established in 1971. In 1971, OSHA adopted the American National Standards Institute (ANSI) national consensus standard for beryllium and beryllium compounds. The standard set a permissible exposure limit (PEL) for beryllium and beryllium compounds at 2 µg/m³ as an 8-hour time weighted average (TWA); 5 µg/m³ as an acceptable ceiling concentration; and 25 µg/m³ as an acceptable maximum peak above the acceptable ceiling concentration for a maximum duration of 30 minutes in an 8-hour shift.

In this final rule OSHA is lowering the PEL for beryllium and beryllium compounds and revising other provisions to protect employees. The revisions in this final rule include:

1. Reducing the PEL for beryllium to 0.2 µg/m³ as an 8-hour TWA and establishing a new short-term exposure limit (STEL) of 2.0 µg/m³ over a 15-minute period;
2. This final rule applies to work areas containing a process or operation that can release beryllium where employees are, or can reasonably be expected to be exposed to airborne beryllium at any level;
3. Requires the use of engineering and work practice controls such as ventilation or enclosure;
4. Requires the construction and use of change rooms and showers;

5. Provide respirators when controls are inadequate and requires the employer to provide a powered air-purifying respirator (PAPR) instead of a negative pressure respirator where respiratory protection is required and the employee requests a PAPR;
6. Limit worker access to high-exposure areas and requires the use of protective clothing and equipment where employee exposure exceeds, or can reasonably be expected to exceed the PEL or STEL or where there is a reasonable expectation of dermal contact with beryllium;
7. Develop a written exposure control plan;
8. Revised training requirements;
9. Medical examinations must be offered to each employee who is or is reasonably expected to be exposed at or above the action level for more than 30 days per year;
10. Medical examinations must be offered at least every two years; and
11. Exposure monitoring must be repeated within six months where employee exposures are at or above the action level but at or below the PEL, and within three months where employee exposures are above the PEL or STEL.

Effective and Compliance Dates

This final rule will become effective on March 10, 2017.

Compliance with the change rooms and showers is required beginning on March 10, 2019.

Compliance with the obligation for engineering controls is required beginning on March 10, 2020.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-09/pdf/2016-30409.pdf

H. DoA/APHIS Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List; Amendments to the Select Agent and Toxin Regulations; Final Rule

HHS/CDC Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review of the List of Select Agents and Toxins and Enhanced Biosafety Requirements; Final Rule

On January 19, 2017, the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) published final rules (82 FR 6197-6210) and (82 FR 6278-6294) amending and republishing the list of select agents and toxins and amending the regulations regarding the possession, use, and transfer of select agents and toxins.

Summary

This final rule republishes the lists of select agents and toxins with no changes. On January 19, 2016, APHIS and CDC published proposed rules (81 FR 2762 and 81 FR 2805) to remove three select agents and toxins and three overlap select agents and toxins. After consideration of comments received and technical input from advisory groups APHIS and CDC have decided not to make any changes to the list of select agents and toxins at this time.

Following are the amendments included in these final rules.

1. New provisions regarding the inactivation of select agents;
2. Specific biocontainment and biosafety requirements;
3. Provisions to address toxin permissible limits; and

4. Clarification of regulatory language concerning security, training, and recordkeeping.

Effective Date

These final rules will become effective on February 21, 2017.

Links

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-00857.pdf

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-00726.pdf

I. DoA/APHIS Plant Pest and Soil Regulations; Update of Provisions; Proposed Rule; Withdrawal and Reproposal

On January 19, 2017, the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) published a proposed rule (82 FR 6980-7005) regarding the movement of plant pests and soil.

Summary

This proposed rule would move the regulations for the movement of soil to 7 CFR 330.203(c) under 7 CFR 330 Subpart – Plant Pests, Biological Control Organisms, Soil, and Associated Articles.

7 CFR 330.203(c) contains the general conditions governing the interstate movement of soils. All soil moved interstate within the United States would still be subject to any movement restrictions and remedial measures specified for such movement in 7 CFR 301.

Comments Due

Comments on this proposed rule must be submitted to APHIS on or before March 20, 2017.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-00532.pdf