



## VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - May 2018

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No Miscellaneous Updates for May 2018

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**A. EPA Electronic-Manifest System: Update**

In May 2018, the Environmental Protection Agency (EPA) held several electronic manifest (e-Manifest) Application Programming Interface (API) webinars and on May 30, 2018, EPA held a general e-Manifest webinar.

In May, EPA's e-Manifest development team continued to make updates to the Schema and associated files for the e-Manifest system. These updates are available in GitHub. Veolia conducted beta testing of the e-Manifest system in May.

The General e-Manifest webinar provided updates on:

1. The Office of Management and Budget (OMB) approved the 5-Part Hazardous Waste Manifest on May 30, 2018. Printers must submit the specifications for their 5-Part Manifest to EPA for approval before they can begin printing the 5-Part Manifests.
2. EPA conducted a demonstration of the e-Manifest system.

EPA continues their e-Manifest programming efforts and announces their progress during the monthly API webinars. EPA continues to state that the e-Manifest system will be effective on June 30, 2018.

**Links**

The link below provides access to EPA's e-Manifest Monthly Update Webpage.

<https://www.epa.gov/e-manifest/monthly-webinars-about-hazardous-waste-electronic-manifest-e-manifest>

The link below will allow you to view/print the slides from the May 30, 2018 webinar.

<https://www.epa.gov/e-manifest/slides-may-30-2018-e-manifest-webinar>

The link below will allow you to view the demonstration of the e-Manifest system.

<https://www.youtube.com/watch?v=f48yIkdsIY4>

**B. EPA Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule; Final Rule**

On May 30, 2018, EPA published a final rule (83 FR 24664-24671) amending the definition of solid waste (DSW) regulations to satisfy the requirements of vacatures ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on July 7, 2017, and modified on March 6, 2018.

**Summary**

These revisions are limited to two Major revisions. A summary of each of the revisions is included below:

1. Removal of the 2015 Verified Recycler Exclusion and Reinstatement of the 2008 Transfer-Based Exclusion, with Modifications

In the 2015 DSW rule, EPA replaced the 2008 DSW rule transfer-based exclusion (40 CFR 261.4(a)(24-25)) with the verified recycler exclusion (40 CFR 261.4(a)(24)). In promulgating the verified recycler exclusion EPA made four changes to the language of the 2008 transfer-based exclusion:

- a. Removed a prohibition that had made certain spent petroleum catalysts (K171 and K172 hazardous wastes) ineligible for the new recycling exclusions;
- b. Added a specific “contained” standard for the management of the materials prior to being recycled;
- c. Added emergency preparedness and response requirements; and
- d. Replaced a requirement for generators to make a “reasonable effort” to audit the recycling facility prior to sending their material to be recycled including a requirement that the recycling facility obtain a variance from the regulations prior to accepting the recyclable materials.

The D.C. Circuit in its decision to vacate the 2015 verified recycler exclusion and reinstatement of the 2008 transfer-based exclusion, found that the first three provisions could be separated from the fourth, were not impacted by the ruling and are retained. The fourth provision was removed from the regulations.

This final rule includes the following changes that were made by EPA in response to the DC. Circuit ruling.

- a. All references to the verified recycler variance process are removed from 40 CFR 260.30 and 260.31;
  - b. The reference to the financial assurance notification requirement is reinstated under the transfer-based exclusion (40 CFR 260.42(a)(5)); and
  - c. The export requirements for the transfer-based exclusion (40 CFR 261.4(a)(25) were reinstated.
2. Removal of the 2015 Factor Four in the Definition of Legitimate Recycling and the Reinstatement of the 2008 Factor Four

In the 2015 DSW rule, EPA revised the definition of legitimate recycling as follows:

- a. All four factors were required to be satisfied for all excluded recycling activities, including EPA approved recycling exclusions that predated the 2008 DSW rule; and
- b. Factors 3 and 4 became mandatory factors when determining legitimate recycling decisions. In the 2008 DSW rule factors 3 and 4 only need to be “considered” when making Legitimate Recycling determinations.

The D.C. Circuit, in its decision, vacated Factor 4 but left in place all of the other 2015 changes to the legitimacy factors.

Following are the legitimacy criteria requirements in this final rule:

- a. The 2015 version of Factor 4 is vacated in its entirety;
- b. The 2015 change making the legitimacy factors applicable to all exclusions (including pre 2008 decisions) remains;
- c. Factor 3 remains mandatory; and
- d. The 2008 version of Factor 4 which only requires that it be “considered” is reinstated; and
- e. The required documentation of how “all four legitimacy criteria factors are met” has been revised (40 CFR 261.4(a)(23)(ii)(E).

### **Effective Date**

This final rule became effective on the date of publication, May 30, 2018.

### **Link**

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

<https://www.federalregister.gov/documents/2018/05/30/2018-11578/response-to-vacatur-of-certain-provisions-of-the-definition-of-solid-waste-rule>

**C. EPA Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Proposed Rule**

On May 30, 2018, EPA published a proposed rule (83 FR 24850-24883) that would amend the Risk Management Program (RMP) Amendments Rule issued on January 13, 2017 regarding safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and other minor regulatory changes.

**Background**

The Risk Management Program applies to “stationary sources” under the Clean Air Act (CAA) that are subject to the chemical accident prevention requirements in 40 CFR Part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process.

On January 13, 2017, EPA issued a final rule (82 FR 4594) amending 40 CFR Part 68, the chemical accident prevention provisions, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and other changes to clarify and technically correct the regulations. In response, EPA received three petitions for reconsideration of the rule (two from industry groups and one from a group of states).

**Summary**

EPA is proposing to rescind almost all of the requirements added to the accident prevention provisions in Subparts C and D and to modify or rescind other regulations. This includes:

1. The rescission of all requirements for third-party compliance audits, safer technology, and alternatives analysis for facilities with Program 3 regulated processes in North American Industrial Classification System (NAICS) codes 322 (paper manufacturing), 324 (petroleum), and 325 (chemical manufacturing);
2. Removing the phrase “for each covered process” from the compliance audit provisions in 40 CFR 68.58 and 68.79;
3. Rescinding the requirement for the hazard review to include findings from incident investigations (40 CFR 68.50(a)(2));
4. For incident investigations covered by 40 CFR 68.60 and 68.81, EPA is proposing to rescind:
  - a. Requirements for conducting root cause analysis for incident investigations;
  - b. The requirement for incident investigation reports to have specific added data elements:
    - i. schedule to address recommendations;
    - ii. 12-month completion deadline;
    - iii. five-year record retention; and
    - iv. requirement to investigate any incident resulting in catastrophic releases that also results in the process being decommissioned or destroyed.
5. EPA proposes to modify the emergency response contact information required to be provided in a facilities RMP;
6. EPA is also proposing to delay revising the RMP accident prevention program until they understand OSHA’s plans for accident prevention programs.

**Comments Due**

Comments on this proposed rule must be submitted to EPA on or before July 30, 2018.

**Link**

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

<https://www.federalregister.gov/documents/2018/05/30/2018-11059/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act>

**D. EPA The Hazardous Waste Electronic Manifest System Advisory Board: Request for Nominations**

On May 11, 2018, EPA published a request for nominations (83 FR 22058-22059) inviting nominations of individuals to be considered for a three-year appointment to fill one vacancy on the Hazardous Waste Electronic Manifest System Advisory Board for a State Representative with current experience in collecting manifests from generators, treatment, storage, and disposal facilities (TSDF's) and in tracking manifest data in state tracking systems/databases.

**Summary**

Pursuant to the e-Manifest Act the Advisory Board will be comprised of nine members, at least two must have expertise in information technology (IT), at least three must represent users of the manifest system, and at least three must be state representatives responsible for processing hazardous waste manifests. The open position is for a state representative.

State representative nominees should have a comprehensive knowledge of hazardous waste generation, transportation, treatment, storage, and disposal under RCRA Subtitle C at the federal, state, and local levels. They should also have comprehensive knowledge of state programs that currently collect manifests from generators and TSDF's and track manifest data in state tracking systems/databases. Nominations must include a resume, as well as a brief statement describing the nominee's interest in serving on the Board.

**Nomination Date**

Nominations should be received by EPA on or before June 11, 2018.

**Link**

The link below will allow you to view/print this request for nominations to the e-Manifest Advisory Board.

<https://www.federalregister.gov/documents/2018/05/11/2018-10113/the-hazardous-waste-electronic-manifest-system-advisory-board-request-for-nominations>

**E. EPA Spring 2018 Regulatory Agenda**

In July 2018, EPA published the Spring 2018 Semi-Annual Regulatory Agenda as part of the 2018 Spring Unified Agenda and Regulatory Plan.

**Summary**

EPA publishes a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review. Following are the waste-related topics applicable to Veolia operations:

<b>Office of Land and Emergency Management – Final Rule Stage</b>
1. Management Standards for Hazardous Waste Pharmaceuticals
2. Vacatures to the Definition of Solid Waste
<b>Office of Land and Emergency Management – Proposed Rule Stage</b>
1. Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations
2. Modernizing Ignitable Liquids Determinations
3. Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Reconsideration of Amendments
4. Clean Water Act; Hazardous Substances Spill Prevention
<b>Office of Land and Emergency Management – Pre-Rule Stage</b>
1. Municipal Solid Waste Landfill; Liquids Management Regulations under RCRA Subtitle D

**Link**

The link below will allow you to view/print the Spring 2018 Semi-Annual Regulatory Agenda.

<https://www.reginfo.gov/public/do/eAgendaAdvancedSearch>

**F. DOT/PHMSA Hazardous Materials: Revisions to the Emergency Response Guidebook; Notice and Request for Information**

On May 23, 2018, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice (83 FR 23996-23997) soliciting input on ways to improve the Emergency Response Guidebook (ERG) as it develops the 2020 edition (ERG2020).

**Summary**

PHMSA is particularly interested in input from emergency services personnel who have experience using the ERG to respond to hazardous materials transportation incidents. Publication of ERG2020 will increase public safety by providing consistent emergency response procedures for hazardous materials transportation incidents in North America. To continually improve the ERG, PHMSA is publishing this notice to inform interested parties of an open-ended method to relate their experiences using the ERG and recommendations on how it could be modified or improved. If PHMSA receives comments that it cannot consider prior to the publication of ERG 2020, then the comments will be considered on subsequent versions of the ERG. PHMSA is interested in any comments stakeholders or users wish to provide but are particularly interested in information on the following topics:

1. How can the ERG be made more user friendly for first responders during the initial response phase of a hazardous materials transportation incident?
2. Does ERG2016 effectively emphasize the most useful information for the initial response plans?
3. Have you encountered conflicting or ambiguous guidance messages when using the ERG and other sources of technical information?
4. How could the White Pages be improved?
5. In ERG2016’s Yellow or Blue Pages, have you found any identification number and/or material name that seems to be assigned to an incorrect Guide number?
6. Do the Orange Guide Pages contain recommendations and responses that are appropriate to the material they are assigned to?
7. How could the introduction and description of the Green Pages be changed/improved?
8. When calling any of the Emergency Response Telephone Numbers listed in ERG2016, have you experienced a busy telephone line, disconnection, or no response?
9. What format of the ERG do you use (hardcopy, electronic, online, mobile applications, etc.)?
10. How often do you use the ERG in a dangerous goods transportation emergency?

**Comments Due**

PHMSA has not established a due date for comment submittal.

**Links**

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

<https://www.federalregister.gov/documents/2018/05/23/2018-11055/hazardous-materials-revisions-to-the-emergency-response-guidebook>

PHMSA has established an email address for the submittal of comments. The email address is:

[ERGComments@dot.gov](mailto:ERGComments@dot.gov)

**G. DOT/FMCSA/PHMSA Spring 2018 Regulatory Agenda**

In May 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) published the Spring 2018 Semi-Annual Regulatory Agenda as part of the 2018 Spring Unified Agenda and Regulatory Plan.

**Summary**

FMCSA and PHMSA publish a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review. Following are the commercial motor vehicle and hazardous materials transportation related topics applicable to Veolia operations:

<b>Federal Motor Carrier Safety Administration – Final Rule Stage</b>
1. Limitations on the Issuance of CDLs with a Hazardous Materials Endorsement
2. Extension of Compliance Dates for Medical Examiner’s Certification Integration
3. Commercial Learner’s Permit Validity
4. Definition of Tank Vehicle Used for Determining the CDL Endorsement Requirement
5. Incorporation by Reference: North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permit
6. Rulemaking Procedures Update
<b>Federal Motor Carrier Safety Administration – Proposed Rule Stage</b>
1. Controlled Substances and Alcohol Testing: State Driver’s Licensing Agency Downgrade of Commercial Driver’s License
2. ELDT: Class B to Class A CDL Upgrade
3. Record of Violations
<b>Federal Motor Carrier Safety Administration – Pre-Rule Stage</b>
1. Application for Employment

<b>Pipeline and Hazardous Materials Safety Administration – Final Rule Stage</b>
1. Hazardous Materials: Miscellaneous Amendments Pertaining to DOT Specification Cylinders
2. Hazardous Materials: Response to Petitions from Industry to Modify, Clarify or Eliminate Regulations
3. Hazardous Materials: Miscellaneous Amendments; Response to Appeals and Corrections

Pipeline and Hazardous Materials Safety Administration – Proposed Rule Stage
1. Hazardous Materials: Adoption of Miscellaneous Petitions to Reduce Regulatory Burdens
2. Hazardous Materials: Continued Conversion of Special Permits
3. Hazardous Materials: Harmonization with International Standards

### Link

The link below will allow you to view/print the Spring 2018 Semi-Annual Regulatory Agenda.

<https://www.reginfo.gov/public/do/eAgendaAdvancedSearch>

## H. OSHA Revising the Beryllium Standard for General Industry; Direct Final Rule

On May 7, 2018, the Occupational Safety and Health Administration (OSHA) published a direct final rule (83 FR 19936-19949) and a proposed rule (83 FR 19989-20001) revising the Beryllium Standard final rule by adopting a number of clarifying amendments to address the application of the standard to materials containing trace amounts of beryllium.

### Background

On January 9, 2017, OSHA published a final rule (82 FR 2470) titled Occupational Exposure to Beryllium and Beryllium Compounds. In the final rule OSHA issued three separate standards; general industry, shipyards, and construction. The final rule revised the Permissible Exposure Level (PEL) to 0.2 µg/m<sup>3</sup>, established a new short-term exposure limit (STEL) of 2.0 µg/m<sup>3</sup> over a 15-minute sampling period and an action level of 0.1 µg/m<sup>3</sup> as an 8-hour time weighted average (TWA), along with other provisions to protect employees (e.g., exposure assessment, respiratory protection, personal protective equipment, etc.).

### Summary

This direct final rule amends the beryllium standard for general industry by clarifying OSHA's intent with respect to certain terms in the standard. Some of these amendments are:

1. Amends the definition of Beryllium Work Area to “(1) Containing a process or operation that can release beryllium and involves materials that contain at least 0.1% beryllium by weight; and (2) where employees are, or can reasonably be expected to be exposed to airborne beryllium at any level or where there is the potential for dermal contact with beryllium.”
2. Amends the definition of beryllium-contaminated or contaminated with beryllium to “Contaminated with dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight.”
3. Amends the definition of emergency to “Any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which may or does result in an uncontrolled and unintended release of airborne beryllium that presents a significant hazard.”
4. Clarifies that the disposal and recycling requirements apply to “Materials that contain beryllium in concentrations 0.1 percent by weight or more or are contaminated with beryllium.”

### Effective Date

This direct final rule will become effective on July 6, 2018, unless OSHA receives significant adverse comment by June 6, 2018.

### Links

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



<https://www.federalregister.gov/documents/2018/05/07/2018-09306/revising-the-beryllium-standard-for-general-industry>

The link below will allow you to view the proposed rule.

<https://www.federalregister.gov/documents/2018/05/07/2018-09307/revising-the-beryllium-standard-for-general-industry>

**I. OSHA Spring 2018 Regulatory Agenda**

In May 2018, the Occupational Safety and Health Administration (OSHA) published the Spring 2018 Semi-Annual Regulatory Agenda as part of the 2018 Spring Unified Agenda and Regulatory Plan.

**Summary**

OSHA publishes a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review. Following are the occupational health and safety related topics applicable to Veolia operations:

<b>Occupational Safety and Health Administration – Pre-Rule Stage</b>
1. Blood Lead Level for Medical Removal
2. Lock-Out/Tag-Out Update
3. Powered Industrial Trucks
4. Emergency Response and Preparedness

**Link**

The link below will allow you to view/print the Spring 2018 Semi-Annual Regulatory Agenda.

<https://reginfo.gov/public/do/eAgendaMain>