

Veolia North America - Industrial Business Regulatory Update - May 2020

ENVIRONMENTAL UPDATES

- A. [EPA: EPA Aggressively Working to Increase Research and Understand PFAS: Notice](#)
- B. [SWRCB: California Goes to National Accreditation for Environmental Labs: Announcement](#)
- C. [EPA: COVID-19 Implications for Signing Paper Hazardous Waste Manifests: Memorandum](#)
- D. [EPA: EPA Guidance; Administrative Procedures for Issuance and Public Petitions: Proposed Rule](#)

TRANSPORTATION UPDATES

- E. [DOT, FMCSA: Crash Preventability Determination Program: Notice](#)
- F. [PHMSA, DOT: Harmonization With International Standards: Final Rule](#)
- G. [PHMSA, DOT: New York City Permit Requirements for Transportation of Certain Hazardous Materials; Decision on Petition for Reconsideration of an Administrative Determination of Preemption](#)
- H. [FMCA; EXTENSION OF EXPANDED EMERGENCY DECLARATION No. 2020-002 UNDER 49 CFR 390.25; Extension of Expanded Emergency Declarations](#)

HEALTH & SAFETY UPDATES

- I. [OSHA: Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 \(COVID-19\); Guidance](#)

MISCELLANEOUS UPDATES

- J. [White House; Executive Order on Regulatory Relief to Support Economic Recovery; Executive Order](#)

A. EPA Aggressively Working to Increase Research and Understand PFAS; Notice

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 5/13/2020

Summary

The United States Environmental Protection Agency (EPA) issued a notice on May 13, 2020 stating that they are continuing to focus on taking action to address polyfluoroalkyl substances (PFAS) and protect public health. As a commitment to the February 2019 PFAS Action Plan, the agency is expanding its research efforts and capabilities by launching its PFAS Innovative Treatment Team (PITT). The notice explains that the PITT is a dedicated and full-time team that brings together a multi-disciplined research staff.

Andrew Wheeler said “Our world-class scientists are continuing their work under the PFAS Action Plan to understand and identify the potential health risks associated with these emerging chemicals of concern. This new approach will allow the agency to expand its efforts to develop innovative techniques to test for, remove, and destroy PFAS.”

The goals of the PITT are as follows:

- Assess current and emerging destruction methods being explored by EPA, universities, other research organizations, and industry.
- Explore the efficacy of methods while considering by-products to avoid creating new environmental hazards.
- Evaluate methods' feasibility, performance, and costs to validate potential solutions.

The results of this research project are expected later this year.

Reference/Link

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

<https://www.epa.gov/newsreleases/epa-aggressively-working-increase-research-and-understand-pfas>

B. California Goes to National Accreditation for Environmental Labs; Announcement

Agency

California Water Boards (CWB)

Dates

Published Date: 05/05/2020

Summary

On May 5, 2020 the California Water Boards (CWB) adopted comprehensive regulations to modernize the Environmental Laboratory Accreditation Program (ELAP). This will require accredited laboratories to implement a nationally accepted standard called the NELAC Institute (TNI) Standard for managing all factors that can potentially affect the quality of lab results.

The California Water Boards has published helpful guidance documents which are linked below:

Guidance Document of Top 5 Questions People are Asking about the New California ELAP Regulations:

https://www.waterboards.ca.gov/drinking_water/certlic/labs/documents/elap_regs_top_5.pdf

Roadmap to ELAP Accreditation: Application Requirements:

https://www.waterboards.ca.gov/drinking_water/certlic/labs/documents/roadmap_applications_graphic.pdf

Reference/Link

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

https://www.waterboards.ca.gov/press_room/press_releases/2020/pr20200506_elap.pdf

C. COVID-19 Implications for Signing Paper Hazardous Waste Manifests; Memorandum

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 5/18/2020

Effective Date: 5/13/2020

Summary

The Environment Protection Agency (EPA) has published a memorandum to respond to concerns regarding signing paper Hazardous Waste Manifests during the COVID-19 pandemic. The EPA recognizes that the COVID-19 public health emergency may result in worker shortages and that social distancing requirements may impede normal operations. This memorandum provides hazardous waste generators flexibility with respect to signatures on paper hazardous waste manifests. This policy is being applied retroactively beginning on March 13, 2020 and will continue until the EPA terminates this policy. A notification will be posted at the following link at least seven days prior to the termination of this policy.

<https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>

Transporters should first consider obtaining the generator's signature by using the electronic manifest (e-Manifest) system. To obtain an e-Manifest account, please refer to the e-Manifest user registration webpage at <https://www.epa.gov/e-manifest/e-manifest-user-registration>.

If the electronic manifest is not a viable option the following steps should be taken:

1. The transporter should write the name of the generator in Box 15 and under "Signature," the transporter should write "Generator using signature substitute due to COVID-19"
2. The generator should provide a signature substitute in a(n) cell phone text message, email, or hard copy letter mailed to the transporter and designated facility. The generator should use one document/transmittal to cover all manifest activities per transporter/designated facility throughout the duration of this temporary policy
3. The transporter or designated facility should write in Box 14 of the manifest "documentation for generator signature substitute available upon request." Generators and transporters taking the steps outlined above should maintain this documentation.

Reference/Link

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

https://www.epa.gov/sites/production/files/2020-05/documents/covid-19_manifest_signature_temporary_policy_5-18-20_final_for_signature_508.pdf

D. EPA Guidance; Administrative Procedures for Issuance and Public Petitions; Proposed Rule

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 05/22/2020

Comments Due: 06/22/2020

The information contained herein is provided by Veolia North America for general informational purposes only. This information should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you should have any questions, please contact Kevin McGrath, Director, Environment at kevin.mcgrath@veolia.com.

Summary

The Environmental Protection Agency (EPA) is proposing a rule to establish the procedures and requirements for how the EPA will manage the issuance of guidance documents subject to the requirements of the Executive order entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents.” Guidance documents are non-binding publications used to clarify existing obligations and provide information to help regulated parties comply with regulations and requirements.

This proposed rule will establish general requirements and procedures for certain guidance documents issued by the EPA. Additionally, the regulations provide procedures for the public to petition to modify or withdraw active guidance documents. This proposed rule is intended to increase the transparency of EPA’s guidance practices and improve the process used to manage EPA guidance documents.

When a guidance document has been issued, modified, or withdrawn, the EPA proposes to inform the public via the EPA guidance portal or other agency website. The EPA is asking for comments on which would be the most effective way to inform the public.

The EPA is proposing the following general requirements and procedures for guidance documents:

Each guidance document will

1. include the term “guidance.”
2. include the component office issuing the document.
3. include the title of the guidance and the document identification number.
4. include the date of issuance.
5. include when practicable, identify the general activities to which and the persons to whom the document applies.
6. include the citation to the statutory provision or regulation to which the document applies.
7. make a notation if it is a revision to a previously issued document
8. include a short summary of the subject matter
9. include a disclaimer stating that the contents of the document do not have the force and effect of law and that it is non binding.

The EPA is proposing the following requirements for significant guidance documents:

1. Notice and Public Comment Opportunities
2. Finalizing significant guidance documents
3. Procedural exceptions
4. Required approval by the EPA Administrator or other Presidentially appointed EPA official, or an official who is serving in an acting capacity of either of the foregoing.
5. Compliance with other applicable requirements

Guidance documents can be found at the guidance portal website:

<https://www.epa.gov/guidance>

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-11079.pdf>

E. **Crash Preventability Determination Program; Notice**

Agency

Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: 05/06/2020

Summary

FMCSA announces the start of the Crash Preventability Determination Program (CPDP). Under this program, a motor carrier or driver may submit a Request for Data Review (RDR) with the required police accident report and other supporting documents, photos, or videos for eligible crashes that occurred on or after August 1, 2019 through the Agency's DataQs website. FMCSA will remove crashes that were not preventable by the motor carrier or driver from the SMS prioritization algorithm. FMCSA will also note the not preventable determinations in the driver's Pre-Employment Screening Program (PSP) record and will note not preventable, preventable, and undecided determinations in the motor carrier's list of crashes on the public SMS website.

The following crash types are eligible for participation in the program:

Struck in the Rear type of crash when the CMV was struck:

- in the rear; or
- on the side at the rear.

Wrong Direction or Illegal Turns type of crash when the CMV was struck:

- by a motorist driving in the wrong direction; or
- by another motorist in a crash when a driver was operating in the wrong direction; or
- by a vehicle that was making a U-turn or illegal turn.

Parked or Legally Stopped type of crash when the CMV was struck:

- while legally stopped at a traffic control device (e.g., stop sign, red light or yield); or
- while parked, including while the vehicle was unattended.

Failure of the other vehicle to Stop type of crash when the CMV was struck:

- by a vehicle that did not stop or slow in traffic; or
- by a vehicle that failed to stop at a traffic control device.

Under the Influence type of crash when the CMV was struck:

- by an individual under the influence (or related violation, such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred; or
- by another motorist in a crash where an individual was under the influence (or related violation such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred.

Medical Issues, Falling Asleep or Distracted Driving type of crash when the CMV was struck:

- by a driver who experienced a medical issue which contributed to the crash; or
- by a driver who admitted falling asleep or admitted distracted driving (e.g., cellphone, GPS, passengers, other).

Cargo/Equipment/Debris or Infrastructure Failure type of crash when the CMV:

- was struck by cargo, equipment or debris (e.g., fallen rock, fallen trees, unidentifiable items in the road); or crash was a result of an infrastructure failure.

Animal Strike type of crash when the CMV:

- struck an animal

Suicide type of crash when the CMV:

- struck an individual committing or attempting to commit suicide

Rare or Unusual type of crash when the CMV:

- was involved in a crash type that seldom occurs and does not meet another eligible crash type (e.g., being struck by an airplane or skydiver or being struck by a deceased driver).

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2020-05-06/pdf/2020-09679.pdf>

F. Harmonization With International Standards (HM-2150); Final Rule

Agency

Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT)

Dates

Published Date: 05/11/2020

Effective Date: 05/11/2020, except for instruction 17, which is effective 01/02/2023

Summary

PHMSA amends the HMR to maintain alignment with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the IMDG, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the UN Recommendations on the Transport of Dangerous Goods Model Regulations. Additionally, PHMSA adopts amendments to the HMR that would allow for increased alignment with the Transport Canada, Transportation of Dangerous Goods (TDG) Regulations.

Amendments that could have a possible impact on Veolia operations include:

1. Proper shipping names assigned with an NA identification number would be limited to shipments being transported in the US only (no longer authorized in Canada).
2. Amendments to the Hazardous Materials Table:
 - a. New shipping names for articles containing hazardous materials.
 - b. New shipping name for Toxic solid, flammable, inorganic, n.o.s., PG I and II (UN3535).
 - c. Packing group II and III assignments removed from "UN3316, Chemical kit" and "UN3316, First aid kit" entries.
 - d. The word "stabilized" added to the entry for 2-Dimethylaminoethyl acrylate.
3. Amendments to Special Provisions:
 - a. Revising SP 387 & 421 to extend the sunset dates for provisions concerning the transportation of polymerizing substances until January 2, 2023.
 - b. New SP 388 added to lithium metal and lithium ion battery shipping names to prescribe requirements for lithium batteries containing both primary lithium metal cells and rechargeable lithium ion cells that are not designed to be externally charged.
 - c. New SP 391 added to prohibit the transportation of articles containing certain high-hazard materials without first obtaining an approval from the Associate Administrator.
4. Amendments to the vessel storage requirements to ensure proper segregation between acids and both amines and cyanides.
5. New requirement: the words "Temperature Controlled" be added to the proper shipping name on the shipping papers if not already indicated in the Hazardous Materials Table.
6. Authorization to placard only two sides of a flexible IBC when it is impractical to apply placards on each side and each end due to the shape of the packaging (e.g. round).
7. New requirement applicable to electric storage batteries containing electrolyte acid or alkaline corrosive battery fluid to specify that electrically non-conductive packaging materials must be used and that contact with other electrically conductive materials must be prevented.
8. Amendments to Lithium Cells and Batteries:
 - a. Must be packaged in a manner that prevents damage caused by movement or placement within the package.
 - b. Inner packagings containing lithium cells or batteries must be separated from contact with electrically conductive materials.

- c. Clarification that large packages are limited to a single battery or to a single item of equipment that may contain one or more batteries (also applicable to damaged, defective or recalled cells or batteries).
 - d. Excepted smaller cells or batteries packed in equipment robust enough to protect the batteries from damage or short circuit would no longer have to be placed in an additional packaging.
 - e. Overpacks containing excepted smaller cells or batteries bearing the lithium battery mark must either have the marking visible through the overpack, or must have the marking affixed to the outside of the overpack. The overpack must also be marked with the word "OVERPACK" in lettering at least 12 mm (0.47 inches) high.
 - f. New authorization to use certain rigid large packagings to transport a single large battery or single large item of equipment when lithium batteries are shipped for disposal or recycling.
 - g. Cushioning material used in packaging containing damaged, defective or recalled cells or batteries must be electrically non-conductive.
9. Increased quantity limits for liquids and solids being transported as dangerous goods in machinery or apparatus.
 10. New entry to the Self Reactives Materials Table - Phosphorothioic acid, O-[(cyanophenyl methylene) azanyl] O,O-diethyl ester.
 11. 3 new entries to the Organic Peroxide Table and 4 new entries to the Organic Peroxide IBC Table. The new entries to the Organic Peroxide Table are "Di-(4-tert-butylcyclohexyl) peroxydicarbonate [as a paste]," "Diisobutyl peroxide [as a stable dispersion in water]," and "1-Phenylethyl hydroperoxide." The new entries to the Organic Peroxide IBC Table are "Cumyl peroxyneodecanoate, not more than 52%, stable dispersion, in water," "2,5-Dimethyl-2,5-di(tertbutylperoxy)hexane, not more than 52% in diluent type A," "3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane not more than 27% diluent type A," and "tert-Amyl peroxy-2-ethylhexanoate, not more than 62% in a diluent type A" and by adding a type 31HA1 IBC authorization to the existing entry for "tert-Butyl hydroperoxide, not more than 72% with water."
 12. New section 49 CFR 173.232 added to prescribe packaging requirements for articles containing hazardous materials.
 13. Additional shipping paper requirements for accepted packages containing Class 7 radioactive materials being shipped by cargo vessel.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2020-05-11/pdf/2020-06205.pdf>

G. New York City Permit Requirements for Transportation of Certain Hazardous Materials; Decision on Petition for Reconsideration of an Administrative Determination of Preemption

Agency

Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT)

Dates

Published Date: 05/15/2020

Effective Date: 05/15/2020

Summary

On July 6, 2017, PHMSA published in the Federal Register an administrative determination that Federal hazardous material transportation law preempts, in part, FDNY's permit, inspection, and fee requirements. FDNY has petitioned for reconsideration of that determination. FDNY's petition for reconsideration is granted in part, and denied in part. Trucks transporting hazardous materials **and are based** in NYC are subject to the FDNY's permit and inspection requirements.

Reference/Link

The link below will allow you to view/print this decision on petition for reconsideration of an administrative determination of preemption.

<https://www.govinfo.gov/content/pkg/FR-2020-05-15/pdf/2020-10489.pdf>

H. EXTENSION OF EXPANDED EMERGENCY DECLARATION No. 2020-002 UNDER 49 CFR 390.25; Extension of Expanded Emergency Declaration

Agency

Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: 5/13/2020

Effective Until: 06/14/2020

Summary

Due to the ongoing national emergency conditions that created a need for immediate transportation of essential supplies, equipment and persons related to COVID-19, FMCSA has extended the relief provided under Emergency Declaration No. 2020-002 until June 14, 2020.

The Emergency Declaration grants emergency relief from Parts 390-399 of the Federal Motor Carrier Safety Regulations to motor carriers and drivers providing direct assistance in support of relief efforts related to the COVID-19 national emergency including transportation to meet immediate needs for:

1. Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19
2. Supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants
3. Food, paper products and other groceries for emergency restocking of distribution centers or stores
4. Immediate precursor raw materials such as paper, plastic or alcohol that are required and to be used for the manufacture of items in categories (1), (2) or (3)
5. Fuel
6. Liquefied gases to be used in refrigeration or cooling systems
7. Equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19
8. Persons designated by Federal, State or local authorities for medical, isolation or quarantine purposes; and
9. Persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

Direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this emergency declaration.

Veolia drivers must not utilize relief from compliance with the FMCSA or USDOT hazardous materials regulations that is provided through a federal emergency declaration without first obtaining approval from Jennifer Fletcher, VNA Senior Manager, Transportation Compliance and Tom Baker, VNA VP, EHS&T.

Reference/Link

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

https://www.fmcsa.dot.gov/emergency/extension-expanded-emergency-declaration-no-2020-002-under-49-cfr-ss-39025?mc_cid=0387411e0d&mc_eid=6a590a0d02

I. Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19); Guidance

Agency

Occupational Safety and Health Administration (OSHA)

Dates

Published Date: 5/19/2020

The information contained herein is provided by Veolia North America for general informational purposes only. This information should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you should have any questions, please contact Kevin McGrath, Director, Environment at kevin.mcgrath@veolia.com.

Summary

The Occupational Safety and Health Administration (OSHA) has released a revised enforcement guidance for recording cases of Coronavirus Disease 2019 (COVID-19). The previous memorandum on this subject from May 26, 2020 will be rescinded and this memorandum will go into and remain in effect until further notice.

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19, if:

1. The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);
2. The case is work-related as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7.

Until further notice, OSHA will enforce the recordkeeping requirements of 29 CFR 1904 for employee COVID-19 illnesses for all employers according to the guidelines below. Recording a COVID-19 illness does not, of itself, mean that the employer has violated any OSHA standard.

OSHA has acknowledged the difficulty with determining work-relatedness, therefore OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations. Certified Safety and Health Officials (CSHOs) should apply the following considerations:

- The reasonableness of the employer's investigation into work-relatedness
- The evidence available to the employer
- The evidence that a COVID-19 illness was contracted at work

Reference/Link

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

<https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

J. Executive Order on Regulatory Relief to Support Economic Recovery; Executive Order

Agency

White House

Dates

Published Date: 5/19/2020

Summary

President Donald Trump has signed an executive order in order to give regulatory relief to support economic recovery due to COVID-19. The goal of this executive order is to give relief to small businesses to keep workers employed and to bring assistance to those that have lost their jobs.

The first section of the executive order addresses policy. The section instructs agencies to address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility.

The second section of the executive order includes definitions. The third section addresses federal responses. The heads of all agencies have been directed to use any emergency authorities that the executive branch has invoked in response to COVID-19 and also are encouraged to promote economic recovery through non-regulatory actions.

The fourth section of the executive order addresses the rescission and waiver of regulatory standards. The heads of all agencies shall identify regulatory standards that may inhibit economic recovery and shall consider taking action by issuing proposed rules as necessary, to temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements, and to consider exercising appropriate temporary enforcement discretion.

The fifth section includes details on compliance assistance for regulated entities. The heads of agencies, excluding the Department of Justice, are instructed to accelerate procedures for entities or persons to receive a pre-enforcement ruling under Executive Order 13892.

The sixth section discusses fairness in Administrative Enforcement and Adjudication. This section explains that the heads of all agencies shall consider the principles of fairness in administrative enforcement and adjudication. The seventh section of this executive order describes the review of regulatory response. The eighth section explains the implementation. Lastly, The ninth section explains the general provisions of the executive order.

It is best to check with your regulatory agency to ensure that any regulatory relief that an organization plans to take is acceptable. Additionally, organizations should keep records of the ways in which they are attempting to maintain compliance.

Reference/Link

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

<https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/>