# Veolia North America - Industrial Business Regulatory Update - October 2020

## ENVIRONMENTAL UPDATES

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B. DOE; Amended Record of Decision for the Long-Term Management and Storage of Elemental Mercury; Amended Record of Decision

C. EPA; EPA Guidance; Administrative Procedures for Issuance and Public Petitions; Final Rule

D. NJDEP; Governor Murphy Directs that State Agency Decisions be Guided by Environmental Justice Principles DEP Issues Guidance, Establishes Environmental Justice Interagency Council; News Release

E. California; Hazardous Waste: Transportation: Consolidated Manifesting Procedure; Assembly Bill

## TRANSPORTATION UPDATES

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## HEALTH & SAFETY UPDATES

*No Health & Safety Updates for October 2020*

## MISCELLANEOUS UPDATES

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H. DEA; Schedules of Controlled Substances: Placement of Oliceridine in Schedule II; Interim Final Rule

**A. PFAS TRI Reporting Guidance Website; Resources**

## Agency

Environmental Protection Agency (EPA)

## Dates

Published Date: 10/14/2020

## Summary

The Environmental Protection Agency (EPA) has published a guidance website which provides guidance for facilities that manufacture, produce, or otherwise use Toxics Release Inventory (TRI)-listed Per- and Polyfluoroalkyl Substances (PFAS) on who must report, reportable quantities, and how to estimate annual releases.

The website includes the following sections:

1. Section 1: Summary
    a. Reporting Deadlines: 172 PFAS are on the TRI effective as of January 1, 2020. TRI reporting for these chemicals will be due to EPA by July 1, 2021, for calendar year 2020 data.
    b. Thresholds: The NDAA established TRI manufacturing, processing, and otherwise use reporting thresholds of 100 pounds for each of the listed PFAS.
    c. Exemptions: The de minimis concentration level for perfluorooctanoic acid (PFOA) (CASRN: 335-67-1) is 0.1%. At the present time, all of the other TRI-listed PFAS have a de minimis level of 1%.
    d. Supplier Notification Requirements: Some manufacturers of PFAS are required to provide notification to their customers indicating that the listed PFAS are subject to TRI reporting requirements and including the name, CAS number, and percent by weight of each TRI chemical in the product.
    e. Future of PFAS
2. Section 2: TRI Resources
    a. Section 2.1: Threshold Determination
    b. Section 2.3: Reporting Exemptions
    c. Section 2.4: Providing Supplier Notification
    d. Section 2.5: Using Supplier Notifications
    e. Section 2.6: Release and Waste Management Estimation
    f. Section 2.7: Firefighting
    g. Section 2.8: Future Changes that may Affect Reporting of PFAS to TRI
3. Section 3: Non-TRI PFAS Resources

Please click the following link to view the list of 172 PFAS added to TRI for Reporting Year 2020: List of PFAS on the TRI chemical list for RY 2020

## Reference/Link

The link below will allow you to view this Guidance Website.

https://ofmpub.epa.gov/apex/guideme_ext/f?p=GUIDEME:GD:::RP:gd:pfas_resources

**B. Amended Record of Decision for the Long-Term Management and Storage of Elemental Mercury; Amended Record of Decision**

## Agency

Department of Energy (DOE)

## Dates

Published Date: 10/06/2020
Effective Date: 10/06/2020

## Summary

The US Department of Energy (DOE) has issued an Amended Record of Decision (AROD) in order to modify the Record of Decision (ROD) for the long term management and storage of elemental mercury. The ROD which is being amended was published in the Federal Register on December 6, 2019.

The AROD published on October 6th, 2020, withdraws the designation of Waste Control Specialists (WCS) pursuant to the Mercury Export Ban Act of 2008 (MEBA) as the DOE facility for the long-term management and storage of elemental mercury.

The DOE will store elemental mercury which the DOE accepts the conveyance of title to pursuant to a legal settlement or proceeding at WCS.

A summary of the ROD that is being amended was included in the December 2019 Veolia North America Regulatory Update. Please refer to that Regulatory Update for the full summary.

On December 23, 2019, DOE published a final rule to establish a fee schedule for the long-term management and storage of elemental mercury in accordance with MEBA. On September 3, 2020, DOE filed a motion in the District Court asking the Court to vacate and remand the Fee Rule. In the motion, DOE acknowledged that it made errors, omissions, and unclear statements in the Fee Rule. In order to address these legal issues, DOE requested that the Court vacate and remand the Rule to the Department for reconsideration.

The DOE will engage in notice-and-comment rulemaking to reconsider the estimates and assumptions used to calculate the fee, obtain updated information, and disclose the documentation necessary to facilitate review and comment by interested parties. Due to the inability for the DOE to determine a suitable fee at this time, the DOE is currently unable to accept elemental mercury from generators at a facility of the Department of Energy for long-term management and storage. The DOE will designate a facility or facilities for the purpose of long-term management and storage of elemental mercury generated within the United States when the time is appropriate.

## Reference/Link

The link below will allow you to view/print this Amended Record of Decision.

https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-22020.pdf

**C. EPA Guidance; Administrative Procedures for Issuance and Public Petitions ; Final Rule**

## Agency

Environmental Protection Agency (EPA)

## Dates

Published Date: 10/19/2020
Effective Date: 11/18/2020

## Summary

The Environmental Protection Agency (EPA) has published a regulation that establishes the procedures and requirements for how the EPA will manage the issuance of guidance documents consistent with Executive Order 13891 entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents.” The purpose of this regulation is to ensure that the EPA’s guidance documents are developed with appropriate review, accessible and transparent to the public and benefit from public participation in the development of significant guidance documents.

This Final Rule provides a definition of guidance documents for the purposes of this rule, establishes general requirements for certain guidance documents and incorporates additional requirements for guidance documents which are determined to be significant. Additionally, this Final Rule provides procedures for the public to petition for the modification or withdrawal of active guidance documents or to petition for the reinstatement of a rescinded guidance document. The administrative provisions of this regulation only apply to the EPA and do not regulate any external entities.

This Final Rule established the following definitions:

- Guidance Document - an Agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, subject to the following exclusions:
  (1) Rules promulgated pursuant to notice and comment under 5 U.S.C. 553, or similar statutory provisions;
  (2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);
  (3) Rules of Agency organization, procedure, or practice not intended to have substantial future effect on the behavior of regulated parties;
  (4) Decisions of Agency adjudications under 5 U.S.C. 554, or similar statutory provisions;
  (5) Internal guidance directed to the EPA or its components or other agencies that is not intended to have substantial future effect on the behavior of regulated parties;
  (6) Internal executive branch legal advice or legal opinions addressed to executive branch officials, including legal opinions by the Office of General Counsel, not intended to have substantial future effect on the behavior of regulated parties;
  (7) Agency statements of specific, rather than general, applicability. This would exclude from the definition of ''guidance'' advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations or facilities; and correspondence with individual persons or entities about particular matters, including congressional correspondence or notices of violation unless a document is directed to a particular party but designed to guide the conduct of the broader regulated public;
  (8) Agency statements in the form of speeches, press releases, or similar communications, as well as statements of general applicability concerning participation in the EPA's voluntary programs;
  (9) Legal briefs and other court filings;
  (10) Grant solicitations and awards; or
  (11) Contract solicitations and awards.

- Rescinded guidance document - a document that would otherwise meet the definition of a guidance document or significant guidance document, but that the EPA may not cite, use, or rely upon except to establish historical facts

- Significant Guidance Document - a guidance document that is determined to be ''significant'' pursuant to Executive Order 12866 and Executive Order 13891.

The EPA has determined that all active guidance documents will appear on the EPA Guidance Portal on the EPA website. The EPA has established minimum guidance requirements in order to standardize the process for the EPA. Guidance documents must receive concurrence from the corresponding Presidentially-appointed EPA official. Guidance documents will avoid mandatory language such as "shall," ''must,'' ''required'' or ''requirement,'' unless using these words to describe a statutory or regulatory requirement, or the language is addressed to EPA staff and will not foreclose consideration by the EPA of positions advanced by affected private parties. The EPA will seek significance determinations from the Office of Information and Regulatory Affairs (OIRA) for guidance documents pursuant to E.O. 12866.

The EPA has created additional requirements for significant guidance documents.These requirements include having a draft for public comment, a notice published in the Federal Register, a chance for the public to comment before a withdrawal of a significant guidance document, a public comment process, additional notices, an approval from the EPA Administrator and compliance with the requirements of Executive Orders 12866, 13563, 13609, 13771, 13777, and 13891.

This final rule includes procedures for the public to petition for modification or withdrawal of an active guidance document posted on the EPA Guidance Portal. The EPA will respond to petitions within 90 days after receipt of the petition. Petitions may be submitted by one of the following two ways: (1) An electronic submission through the EPA's designated submission system identified on the EPA Guidance Portal (i.e., using a link labeled ''Submit a petition for Agency modification or withdrawal of guidance documents''), or, (2) a paper submission to the EPA's designated mailing address listed on the EPA Guidance Portal. The EPA is finalizing a requirement that the Agency must make available to the public information about petitions received, including the title of the putative guidance document to which the petition pertains.

## Reference/Link

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

https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-20519.pdf

**D. Governor Murphy Directs that State Agency Decisions be Guided by Environmental Justice Principles DEP Issues Guidance, Establishes Environmental Justice Interagency Council; News Release**

## Agency

New Jersey Department of Environmental Protection (NJDEP)

## Dates

Published Date: 10/01/2020
Effective Date: 09/18/2020

## Summary

New Jersey Department of Environmental Protection (NJDEP) has issued guidance according to Governor Murphy's Executive Order 23, which will help in furthering the promise of environmental justice. On September 18, 2020 Governor Phil Murphy signed the law directing executive branch departments and agencies to apply the principles of environmental justice to their operations, participate in the newly formed Environmental Justice Inter-Agency Council and create assessments and action plans to improve the agencies' effects on environmental justice communities.

The new law requires the New Jersey Department of Environmental Protection to evaluate the environmental and public health impacts of certain facilities on overburdened communities when reviewing certain permit applications. Some of these permits include those for recycling facilities, transfer stations or other solid waste facilities, water treatment facilities, and scrap yards.

The guidance outlines three initiatives critical to aligning New Jersey state government to achieve environmental justice goals:

- Apply principles for furthering the promise of environmental justice in New Jersey
- Launch the Environmental Justice Interagency Council (EJIC)
- Complete executive branch initial assessments and executive branch action plans

Please click the following link to access the full guidance document:

https://nj.gov/dep/ej/docs/furthering-the-promise.pdf

## Reference/Link

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

https://www.nj.gov/dep/newsrel/2020/20_0040.htm

**E. Hazardous Waste: Transportation: Consolidated Manifesting Procedure; Assembly Bill**

## Agency

California Assembly

## Dates

Published Date: 9/28/2020
Effective Date: 9/28/2020

## Summary

The California Assembly has passed an Assembly Bill, A.B. 2920, which amends the Health and Safety Code in order to allow the use of consolidated manifests for transporters who pick up certain hazardous wastes from retailers who do business within the state of California.

This assembly bill defines “Retail Hazardous Waste” as the following: “Unsold consumer products in their original retail sales packaging that are determined to be hazardous waste by the retailer, and includes, but is not limited to, bleach and other cleaning products, pool chemicals, laundry detergent, cosmetics, personal hygiene products, nail polish, aerosol products, herbicides, and fertilizers.”

Wastes eligible for consolidated manifesting include all of the following:

- Solids contaminated with used oil
- Brake fluid
- Antifreeze
- Antifreeze sludge
- Parts cleaning solvents, including aqueous cleaning solvents
- Hydroxide sludge contaminated solely with metals from a wastewater treatment process
- “Paint-related” wastes, including paints, thinners, filters, and sludges. (viii) Spent photographic solutions
- Dry cleaning solvents (including perchloroethylene, naphtha, and silicone-based solvents)
- Filters, lint, and sludges contaminated with dry cleaning solvent
- Asbestos and asbestos-containing materials
- Inks from the printing industry
- Chemicals and laboratory packs collected from K–12 schools
- Absorbents contaminated with other wastes listed in this section
- Filters from dispensing pumps for diesel and gasoline fuels
- Retail hazardous waste collected from a retailer engaged in business in the state.

The use of a consolidated manifest is relevant when a transporter receives certain hazardous wastes from multiple stops along a route. Consolidated manifests may be used only to transport non-RCRA (i.e., California-only) hazardous wastes and Federal wastes that do not require the use of a Uniform Hazardous Waste Manifest (e.g., used oil). The use of a consolidated manifest allows a transporter to carry a single consolidated manifest that describes the waste collected at each stop. At each pick-up, the transporter issues the generator a receipt, which the generator must keep for, at minimum, three years. The transporter will then complete a manifest for each pick-up and submit the manifests to California Department of Toxic Substances Control (DTSC) on the generators’ behalf.

For Small Quantity Generators in California who generate 1,000 kg or less of hazardous waste per month consolidated manifests are also authorized for antifreeze, paint-related wastes, asbestos, printing inks, fuel filters, and lab pack chemicals as long as certain conditions are met in compliance with Cal HSC, Section 25160.2(c). These conditions include for the generator to enter into an agreement with the transporter in which the transporter agrees that the transporter will submit a confirmation to the generator that the hazardous waste was transported to an authorized hazardous waste treatment facility for appropriate treatment. This treatment requirement does not apply to asbestos, asbestos-containing materials, and chemicals and laboratory packs collected from K-12 schools, or any other waste stream for which the department determines there is no reasonably available treatment methodology or facility. These wastes shall be transported to an authorized facility.

## Reference/Link

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

https://openstates.org/ca/bills/20192020/AB2920/

**F. Notice To Extend Exemption From Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals; Extension of Temporary Exemption**

## Agency

Transportation Security Administration (TSA)

## Dates

Published Date: 10/28/2020
Effective Date: 10/30/2020
Effective Through: 12/31/2020 unless otherwise modified by TSA

## Summary

TSA is extending the exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals that TSA published on July 31, 2020 which was scheduled to expire on October 30, 2020, through December 31, 2020. Under this exemption, states may extend the expiration date of hazardous materials endorsements (HMEs) that expire on or after March 1, 2020, for 180 days, due to restrictions and business closures in place in response to the COVID-19 pandemic. If a state grants an extension, the individual with an expired HME must initiate the process of renewing his or her security threat assessment (STA) for the HME no later than 60 days before the end of the state-granted extension. Federal partners, state licensing agencies and related associations report ongoing difficulties in timely renewal of expiring HMEs and asked TSA to consider extending the exemption until the end of calendar year 2020. TSA has determined it is in the public interest to extend the exemption through December 31, 2020, which aligns with similar waivers issued by the U.S. Department of Transportation. TSA may extend this exemption at a future date depending on the status of the COVID-19 crisis.

**Background**
A public health emergency exists in this country as a consequence of the COVID-19 pandemic. In response to this pandemic, on April 2, 2020, TSA issued an exemption from requirements in 48 CFR part 1572 regarding the expiration of a TSA security threat assessment (STA) for HMEs. TSA subsequently extended the duration of the exemption through October 29, 2020.

Under 49 CFR 1572.13(a), no state may issue or renew an HME for an individual's commercial driver's license (CDL), unless the state first receives a Determination of No Security Threat for the individual from TSA following the STA. An individual seeking renewal of an HME must initiate an STA at least 60 days before the expiration of his or her current HME. The process of initiating an STA requires the individual to submit information either to the state licensing agency or a TSA enrollment center, including fingerprints and the information required by 49 CFR 1572.9, at least 60 days before the expiration of the HME. It may be impracticable for some commercial drivers to renew their STAs during the current COVID-19 crisis. Measures to prevent the spread of COVID-19 may affect the ability of commercial drivers to present themselves in-person to a state licensing agency or TSA enrollment center for the collection of fingerprints and applicant information.

Without the new STA, TSA's regulations prevent states from renewing or extending the expiration of the individual's state-issued HME. Consistent with the requirements in 49 CFR 1572.13(b), if the state grants an extension to a driver, the state must if practicable, notify the driver that the state is extending the expiration date of the HME, the date that the extension will end, and the individual's responsibility to initiate the STA renewal process at least 60 days before the end of the extension. If it is not practicable for a state to give individualized notice to drivers, the state may publish general notice, for example, on the appropriate website.

## Reference/Link

The link below will allow you to view/print this Extension of Temporary Exemption.

https://www.govinfo.gov/content/pkg/FR-2020-10-28/pdf/2020-23961.pdf

**G. Schedules of Controlled Substances: Placement of Remimazolam in Schedule IV**

## Agency

Drug Enforcement Administration (DEA)

## Dates

Published Date: 10/6/2020
Comments Due: 11/05/2020
Effective Date: 10/06/2020

## Summary

On July 2, 2020, the U.S. Food and Drug Administration approved a new drug application for BYFAVO (remimazolam) for intravenous use. The Drug Enforcement Administration (DEA) is adhering to the recommendation from the Department of Health and Human Services to place remimazolam and its salts in schedule IV of the Controlled Substances Act (CSA). Remimazolam is chemically known as 4H-imidazol[1,2-a][1,4]benzodiazepine4-propionic acid, 8-bromo-1-methyl-6-(2-pyridinyl)-(4S)-methyl ester, benzenesulfonate (1:1) and also, methyl 3-[(4S)-8-bromo-1-methyl-6-pyridin-2- yl-4H-imidazo[1,2-a][1,4]benzodiazepin4yl]propanoate benzenesulfonic acid. This final rule places remimazolam including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule IV of the CSA.

Remimazolam is subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule IV substances, including the following:

1. Registration
2. Disposal of stocks
3. Security
4. Labeling and Packaging
5. Inventory
6. Records and Reports
7. Prescriptions
8. Manufacturing and Distributing
9. Importation and Exportation
10. Liability

The effective date of this rulemaking is October 06, 2020. Comments for this rulemaking are due on or before November 05, 2020.

## Reference/Link

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

https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-19313.pdf

**H. Schedules of Controlled Substances: Placement of Oliceridine in Schedule II; Interim Final Rule**

## Agency

Drug Enforcement Administration (DEA)

## Dates

Published Date: 10/30/2020
Effective Date: 10/30/2020
Comments Due: 11/30/2020

## Summary

The Food and Drug Administration (FDA) approved a new drug application for oliceridine, chemically known as N-[(3-methoxythiophen-2-yl)methyl] ({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro [4.5]decan-9-yl]ethyl})amine fumarate, on August 7, 2020. The Drug Enforcement Administration (DEA) received a scheduling recommendation from the Department of Health and Human Services to place oliceridine in Schedule II of the Controlled Substances Act (CSA).

The DEA is hereby issuing an interim final rule placing oliceridine, including its isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible, in schedule II of the CSA. As a result, liceridine is subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule II substances, including the following areas:

1. Registration
2. Quota
3. Disposal of stocks
4. Security
5. Labeling and Packaging
6. Inventory
7. Records and Reports
8. Orders for oliceridine
9. Prescriptions
10. Manufacturing and Distribution
11. Importation and Exportation
12. Liability

The effective date of this rulemaking is October 30, 2020. Comments for this rulemaking are due on or before November 30, 2020.

## Reference/Link

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

https://www.govinfo.gov/content/pkg/FR-2020-10-30/pdf/2020-22762.pdf