

IRWIN Regulatory Newsletter – December 2016

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IRWIN

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FOR MORE INFORMATION SEE BELOW OR CALL US AT 508-653-8007

1. FEDERAL: Regulatory Reform for Hazardous Waste Generator Standards

EPA has finalized amendments to the RCRA regulations applicable to generators of hazardous waste, 40 CFR 262, with several goals such as facilitating compliance by improving the readability of the regulation and providing greater flexibility in some areas. Changes made to the regulation include:

- EPA reorganized the regulations and move many provisions into 40 CFR 262 that were previously cross references to other standards.
- EPA replaced the term “Conditionally exempt small quantity generator” with “Very Small Quantity Generator” (VSQG) for generators that generate less than 100 kg per month of

hazardous waste. A separate section was also added clarifying procedures for generators to determine their generator category.

- Large Quantity Generators will be required to refresh their hazardous waste activity notification submittals once every two years concurrent with biennial reporting and Small Quantity Generators will be required to refresh their notifications once every four years.
- Clarifications were added about the required procedures for making waste determinations.
- Some required elements were added for hazardous waste tank and container labels.
- Management practices were added for hazardous waste satellite accumulation areas.
- Large Quantity Generators may now apply for written Fire Department approval to accumulate ignitable or reactive hazardous waste within 50 feet of the property line if it is not feasible to meet the 50 foot setback requirement that normally applies.
- Generators may now accumulate hazardous waste generated during episodic events (up to once per calendar year) without having to increase their registered generator status provided that certain management requirements are met, as well as a required notification 30 days before a planned event or within 72 hours of an unplanned event. The regulation does not indicate whether a generator would need to submit a biennial report if the episodic event occurs during an odd-numbered calendar year.
- Additional emergency planning provisions were added for LQG's and SQG's.
- Provisions were added that allow VSQG's to transfer hazardous waste to an LQG under control of the same person provided that certain management and reporting requirements are met.
- In a separate rulemaking action EPA amended regulations for export and import of hazardous waste for consistency with international requirements and to allow electronic document submittal to EPA.

States with state hazardous waste regulations such as Massachusetts, Rhode Island, and New Hampshire will be required to incorporate changes that are more stringent than the existing federal requirements if they have not yet done so. States also have the option of incorporating changes that are less stringent than the existing federal regulations.

<https://www.federalregister.gov/d/2016-27429>

<https://www.federalregister.gov/d/2016-27428>

2. FEDERAL: Amendments to Stratospheric Ozone Protection Requirements

EPA has finalized amendments to the Stratospheric Ozone Protection regulations, 40 CFR 82, which are related to the management of refrigerants under the Clean Air Act. Changes made to the regulation include:

- Certain venting prohibitions and management and recordkeeping practices for preventing the discharge of refrigerants to the atmosphere were extended to apply to substitute refrigerants such as HFC's as well as currently listed Class I and Class II ozone depleting substances.
- The allowable leak rates for large refrigerant containing equipment were lowered, and these limits were also extended to apply to refrigerant substitutes. Facilities will also be required to inspect large equipment for leaks on a periodic basis.
- Provisions requiring that ozone depleting substances can only be sold to certified technicians were extended to also apply to refrigerant substitutes.
- Recordkeeping provisions were added for disposal of appliances.



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- New or clarified definitions for a number of terms used in the regulations.
- In a separate rulemaking action EPA exempted propane from venting prohibitions under certain conditions and also added and revised a number of substitute listings.

<https://www.federalregister.gov/d/2016-24215>

<https://www.federalregister.gov/d/2016-25167>

3. FEDERAL: Amendments to OSHA Fall Protection Standard

OSHA has replaced its previous Walking-Working Surfaces standard (29 CFR 1910 Subpart D) with an updated standard that includes increased detail on fall protection requirements and updates to reflect advances in technology and national consensus standards. Particular sections affected by the rule change include:

- Additional compliance options besides guard rail installation were added in certain situations such as temporary work in designated areas on roofs.
- Updated safety or fall arrest system requirements were added for fixed ladders.
- Scaffolding requirements were updated to incorporate OSHA's construction standard by reference.
- Employers are prohibited from using rope descent systems at heights greater than 300 feet unless they can demonstrate that another system is not feasible. Certification, testing, inspection, and maintenance requirements for rope descent systems were also added.
- Requirements for personal fall protection systems were added to OSHA's PPE standard (29 CFR 1910 Subpart I) including performance, inspection, use, and maintenance requirements.
- The final rule includes requirements for inspecting walking-working surfaces and taking corrective actions that are identified.
- The final rule includes requirements for training personnel about fall and equipment hazards and fall protection systems by May 2017.

The new regulation provides a phased implementation schedule with the majority of requirements becoming applicable between the beginning of 2017 and the end of 2018.

<https://www.osha.gov/walking-working-surfaces/>

4. FEDERAL: Revised Interpretations for OSHA PSM Standard

OSHA has issued a revised interpretation of the Process Safety Management standard (PSM, 29 CFR 1910.119) regarding the applicability of the standard to mixtures. For chemicals for which no minimum concentration is listed in Appendix A of the PSM standard, the weight of that chemical in mixtures now needs to be counted towards PSM applicability evaluations if the concentration of the chemical in the mixture is at least one weight percent and the vapor pressure of the chemical in the mixture is at least 10 mmHg. OSHA's previous interpretations indicated that chemicals were only covered if present at "commercial grade."

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=30785

OSHA has also issued an enforcement policy regarding recognized and generally accepted good engineering practice (RAGAGEP) under the PSM standard. Note that RAGAGEP compliance is also

relevant to facilities complying with EPA Chemical Accident Prevention regulations or the Clean Air Act General Duty Clause. In particular, the policy includes examples of documents that might be considered RAGAGEP, discussion about selecting appropriate RAGAGEP for particular equipment or operations, how inspectors are to interpret language in RAGAGEP such as “shall” or “should” provisions, requirements for documenting compliance with RAGAGEP, and requirements for following RAGAGEP in inspection and testing procedures.

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=30848

5. FEDERAL: Proposed Rule for OSHA Standards Improvement Project

OSHA has issued a proposed rulemaking to implement Phase IV of its Standards Improvement Project, which is an ongoing effort by OSHA to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in its safety and health standards. Changes being proposed include:

- Remove employees’ Social Security Numbers as a required recordkeeping element for various standards including exposure monitoring and medical surveillance.
- The Lock Out / Tag Out standard applies to servicing and maintenance operations “in which the unexpected energization or startup of the machines or equipment, or the release of stored energy could cause injury to employees” and OSHA is proposing to clarify this provision by striking the word “unexpected.”
- Requirements for PPE, fall protection equipment, traffic control signs and barricades, rollover and overhead protection, and emergency communications for the construction industry would be updated. Requirements for fuel burning equipment and decompression practices used in underground construction would also be updated.
- OSHA is proposing to amend the applicability of the excavation safety standard for the construction industry to clarify the employer’s responsibility to assess hazards associated with falling materials and provide worker protection accordingly.
- Various procedural and recordkeeping updates for employee medical examinations.

Comments on the proposed regulation are being accepted until **January 4, 2017**.

<https://www.federalregister.gov/d/2016-19454>

6. FEDERAL: Addition of HBCD Category to TRI PBT Chemicals List

EPA has added a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program, and also listed this category as a persistent and bioaccumulative toxic (PBT) chemical. HBCD is used primarily as a flame retardant in a variety of applications and EPA has prepared a [report](#) discussing uses of HBCD and potential alternatives available. Two CAS numbers are included under the reporting category: 3194-55-6 and 25637-99-4. If your facility manufactures, processes, or otherwise uses at least 100 pounds per year of HBCD, you may need to begin reporting under TRI for HBCD in 2018 (reports due **July 1, 2018**). Affected facilities in Massachusetts will also need to report and plan for the HBCD category under the Toxics Use Reduction (TUR) program.

<https://www.federalregister.gov/d/2016-28102>



7. FEDERAL: Proposed Addition of Nonylphenol Ethoxylates to TRI Chemicals List

EPA is proposing to add a nonylphenol ethoxylates (NPEs) category to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program. NPEs are nonionic surfactants used in a variety of applications. Thirteen CAS numbers are included under the proposed reporting category. TRI reports for NPEs would be required for facilities that manufacture or process at least 25,000 pounds or otherwise use at least 10,000 pounds of NPEs in a calendar year. Affected facilities in Massachusetts would also need to report for the NPE category under the Toxics Use Reduction (TUR) program. Comments on the proposed regulation are being accepted until **January 17, 2017**.

<https://www.federalregister.gov/d/2016-27547>

8. FEDERAL: Amendments to Area Source Boiler NESHAP

EPA has finalized revisions to the National Emission Standard for Hazardous Air Pollutants (NESHAP) applicable to boilers at area sources of hazardous air pollutants. Changes made to the regulation include:

- EPA revised the definitions of “startup” and “shutdown” which are now defined in terms of the times when fuel is being supplied to the boiler and when the boiler is producing useful thermal energy.
- The NESHAP includes an option to comply with certain particulate matter emission limits by burning low-sulfur fuel and EPA has lowered the allowable sulfur content to 15 ppm (ultra-low sulfur) for fuel being burned to comply with this provision.
- EPA increased the performance test frequency for particulate matter from one-time to once every five years for boilers whose initial performance tests indicate PM emissions less than half of the applicable limit.
- EPA increased the fuel analysis frequency for mercury from one-time to annual for boilers whose initial fuel analysis indicates mercury levels less than half of the applicable limit.

<https://www.federalregister.gov/d/2016-21334>

9. FEDERAL: Proposed Amendments to Renewable Fuel Standard

EPA is proposing revisions to the Renewable Fuel Standard (RFS2, 40 CFR 80) regarding the incorporation of renewable fuel content into transportation fuels. Changes being proposed include:

- Several new renewable fuels and pathways would be recognized, including the production of “biointermediates” at one facility that are then converted to renewable fuel at a different facility. EPA is also seeking comment on recognizing renewable electricity used as transportation fuel.
- Fuel quality specifications for certain ethanol fuel blends would be added.

Comments on the proposed regulation are being accepted until **January 17, 2017**.

<https://www.federalregister.gov/d/2016-25292>

10. MASSACHUSETTS: Final Vapor Intrusion Guidance Document Available

MassDEP has released the final Vapor Intrusion Guidance document (Policy # WSC-16-435) for cleanups under the MCP. The final guidance document includes a variety of changes from the 2014 draft guidance, including:

- The indoor air threshold values and sub-slab soil gas screening values for 1,4-dioxane have each been lowered by about 20% for both residential and commercial / industrial occupancy.
- Further clarification of the Inclusion Distance Approach, which is a tool developed by EPA based on the concept that certain readily biodegradable petroleum hydrocarbons that are not in direct contact with a building would be expected to attenuate in soil before migrating to indoor air.
- Further clarification of how to estimate Exposure Point Concentrations for future uses with existing buildings, noting that future repairs or renovations could potentially alter the attenuation factor from soil gas to indoor air.
- Increased emphasis on short-term response actions to quickly reduce VOC concentrations in indoor air such as sealing of openings in the floor or other preferential pathways, improving ventilation or HVAC modification, or using air purifying units.
- Further clarification of requirements for planning for the effects of unexpected shutdowns of an Active Exposure Pathway Mitigation Measures to support submittals such as a Remedy Operation Status or Permanent Solution with Conditions.
- Additional detail has been added to the recommended specifications for the design and construction of sub-slab depressurization systems.

<http://www.mass.gov/eea/docs/dep/cleanup/vapor-intrusion-guidance-10-14-2016.pdf>

11. MASSACHUSETTS: Addition of Toluene Diisocyanate as Higher Hazard Substance

The Massachusetts list of Higher Hazard Substances has been updated to include toluene diisocyanate (TDI) effective reporting year 2017. If your facility manufactures, processes, or otherwise uses at least 1,000 pounds per year of 2,4-TDI (CAS # 584-84-9), 2,6-TDI (CAS # 91-08-7), or TDI mixed isomers (CAS # 26471-62-5), you may need to begin reporting under TURA for TDI in 2018 (reports due **July 1, 2018**) and conducting TURA planning for TDI beginning in 2020.

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/301cmr41.pdf>

12. MASSACHUSETTS: Amendments to ERP Regulations for Photo Processors, Printers, and Dentists

MassDEP has finalized an amendment to the Environmental Results Program (ERP) regulations for Photo Processors, Printers, and Dentists at 310 CMR 7.26, 310 CMR 70.00, 310 CMR 71.00, and 310 CMR 73.00. Changes made to the regulations include:

- The ERP certification requirement for photo processors was reduced from annual to one-time. Also, digital processing of color or black and white prints or slides is no longer covered under photo processor ERP regulations.
- The previous printer ERP regulations classified printers as large, mid-size, or small. A fourth category was added for very small printers. Very small printers will be required to submit a

one-time ERP certification but not an annual certification and are also no longer required to pay a compliance fee.

- The ERP certification requirement for dentists was increased from once every five years to once every two years. The filing fee was reduced to account for the increased submittal frequency. Also, the deadline for submitting the certification was moved forward from June 15 to March 30.

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/310cmr7.pdf>

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/310cmr70.pdf>

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/310cmr71.pdf>

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/310cmr73.pdf>

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/310cmr4.pdf>

13. MASSACHUSETTS: Industrial Wastewater Holding Tank Amendments

MassDEP has finalized an amendment to the industrial wastewater holding tank regulations at 314 CMR 18.00. Changes made to the regulation include:

- Minimum protection radii for Zone I areas have been revised for consistency with MassDEP's Guidelines for Public Water Systems.
- Facilities may now apply for approval to construct a new holding tank if connecting and discharging to the sewer would have a cost at least 50% higher than installing and maintaining the holding tank. Previously an application was allowed in cases of "severe financial hardship" but specific criteria were not included in the regulation.
- Tank owners may now request approval from MassDEP for variances from the design and operating requirements for underground holding tanks. In order to obtain the approval the tank owner must demonstrate that the wastewater constituents are substantially similar to sanitary sewage and that the alternative design is no less protective.
- Wastewater haulers must now obtain permits from the local Board of Health which must be renewed annually. Operating and recordkeeping requirements for haulers were also added.

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/314cmr18.pdf>

14. MASSACHUSETTS: Underground Injection Control Amendments

MassDEP finalized amendments to the Underground Injection Control (UIC) regulations at 310 CMR 27.00. Changes made to the regulation include:

- Several types of injections were added to the list of injections for Class V injection wells including water purification backwash, aquaculture wastewater, certain types of aquifer remediation discharges, certain types of process water and wastewater disposal, groundwater infiltration, swimming pool drainage, and experimental technology wastewater.
- Registration of injection wells are subject to a 48-day approval process by MassDEP; applications may also be approved presumptively.
- Class V injection wells for activities at single family residences are no longer subject to registration, including stormwater runoff, water purification backwash, wastewater from recovery of geothermal energy for heating, groundwater infiltration, and swimming pool drainage.

- The exemption for registering injection wells associated with MCP response actions was removed. Licensed Site Professionals must submit registrations by April 1, 2017 for existing wells and within 30 days of beginning injection for wells installed after October 1, 2016.
- The registration form for injection wells is being converted to an electronic registration process which filers will be required to use once it becomes available.
- Procedures were added specifying requirements for well closure. Additionally, closure documentation must be submitted to MassDEP prior to closure.
- Requirements were added for owners to properly close Class V injection wells that do or have the potential to receive an unpermitted injection due to improper maintenance, monitoring wells that do or have the potential to receive an injection due to improper maintenance, or boreholes that have not been properly sealed.
- Several MassDEP guidance documents were incorporated by reference including the Standard Design Guidelines for Shallow UIC Class V Injection Wells, Guidelines for Ground Source Heat Pump Wells; and Massachusetts Stormwater Handbook.

<http://www.mass.gov/courts/docs/lawlib/300-399cmr/310cmr27.pdf>

15. MASSACHUSETTS: Adoption of Updated Energy Conservation Code

The Massachusetts Building Code (780 CMR 13.00) has been updated to reference the 2015 edition of the International Energy Conservation Code (IECC). The 2012 edition was referenced previously. The ASHRAE 90.1-2013 standard (Energy Standard for Buildings Except Low-Rise Residential Buildings) was also added as a compliance option for commercial buildings.

The Massachusetts building code also includes a listing of state-specific amendments to IECC 2015 and this list has been updated as well.

<http://www.mass.gov/eopss/agencies/dps/ma-state-building-code-780-cmr.html>

16. MASSACHUSETTS: Adoption of Updated ASME Boiler and Pressure Vessel Code

The Massachusetts Board of Boiler Rules regulations (522 CMR 2.00-12.00) have been updated to reference the 2015 edition of the ASME Boiler and Pressure Vessel Code. The 1998 edition was referenced previously.

The Massachusetts regulations also include a listing of state-specific additions and amendments to the 2015 ASME Code and this list has been updated as well.

<http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/500-599cmr/522cmr.html>

17. MASSACHUSETTS: Hoisting Machinery Amendments

Mass DPS has finalized an amendment to the hoisting machinery regulations at 520 CMR 6.00. Changes made to the regulation include:

- The definition of hoisting machinery was amended to clarify that certain equipment is included if it has the minimum capability of hoisting the load higher than 10 feet, and either

the capability of lifting loads greater than 500 pounds or the capacity of the bucket exceeds ¼ cubic yards.

- Exemptions from hoisting licensure requirements have been expanded to include companies operating exclusively on their own property, public utilities, and companies operating exclusively on public utility property. In order to be eligible for the exemption companies must have an in-service training program approved by DPS and must also have a supervisory employee present during operations who is licensed by DPS.
- The length of time that an applicant must wait to reapply to examine for a hoisting license was reduced from 90 to 60 days.
- The number of continuing education hours required has been reduced for most classes of hoisting license.
- The acceptable forms of identification for applying for a hoisting license has been expanded to include a Massachusetts ID or learner's permit in addition to a valid driver's license. Provisions have also been added to recognize medical waivers issued by Mass RMV.

<http://www.mass.gov/eopss/consumer-prot-and-bus-lic/license-type/hoisting/notice-of-amended-regulation-520-cmr-6-00.html>

18. MASSACHUSETTS: Fuel Quality Testing for Emergency Generators

Mass DFS has added provisions to the state Fire Code regarding annual fuel quality testing requirements for stationary generators that provide emergency or legally required standby power. The new regulations specify methods to be used for the annual testing (ASTM D 975-11b for diesel fuel), and also specify corrective actions including fuel reconditioning or replacement and tank cleaning that must be taken in the event of a failed test.

<http://www.mass.gov/courts/docs/lawlib/500-599cmr/527cmr1.pdf>

19. RHODE ISLAND: Amendments to Hazardous Waste Regulations

Rhode Island DEM has finalized amendments to the state hazardous waste regulations (regulation # DEM OWM-HW-01). Changes made to the regulation include:

- Generators and transporters are no longer required to maintain and submit to RIDEM a list of authorized manifest signers.
- Provisions were added where RIDEM may request a biennial report from an SQG.
- Tank systems that serve as part of a secondary containment system are no longer subject to certain inspection requirements.
- Tank systems containing hazardous waste with no free liquids and are located indoors are no longer subject to secondary containment and leak detection requirements.
- Corrective action procedures were added for restoring a tank to service after failure.
- Requirements were added for availability of emergency communications equipment for LQGs and SQGs.
- RIDEM modified its recycling provisions to no longer regulate e-waste that is not otherwise a hazardous waste, provided that it is being recycled. RIDEM also recognized a federal exemption for shredding of circuit boards.
- RIDEM deleted a prohibition that forbids generators from storing polychlorinated biphenyl (PCB) wastes in satellite accumulation containers.

- RIDEM is now the permit authority for evaporators as opposed to the sewer authority.
- Accumulation standards were added for waste paint collection standards to prevent accidental releases and avoid speculative accumulation.

<http://www.dem.ri.gov/pubs/regs/regs/waste/hwregs16.pdf>

20. IRWIN News

J. Andrew Irwin, PE, LSP, President of IRWIN Engineers received a Greener Cleanup Leadership Award Honorable Mention, one of four awards presented by MassDEP for demonstrating professional stewardship in promoting Greener Cleanup principles and practices to reduce the overall net environmental footprint of MCP response actions. Mr. Irwin received his award for his work with Brownfields Real Estate Development LLC at the 129 Concord Road Site in Billerica, Massachusetts which involved full-scale implementation of a novel in-situ treatment for perchlorate which displaced long term pumping and treatment of groundwater and dramatically reduced energy use, emissions and materials, accelerated the time to closure, and cut the overall cost of remedy by 50 percent.

<http://www.lspa.org/massdep-honors-four-lsp-association-members-with-greener-cleanups-awards>

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