

IRWIN Regulatory Newsletter – Summer 2016

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

1. FEDERAL: Toxic Substances Control Act Amendments

An amendment has been finalized for the Toxic Substances Control Act (TSCA) that will affect EPA's regulatory programs for management of chemicals. The amendment includes a variety of changes, including:

- EPA must review existing as well as new chemicals in commerce and designate each chemical as either high priority or low priority for further assessment. High priority chemicals must be evaluated for safety under intended, known, and reasonably foreseeable conditions of use.
- New chemicals must meet chemical safety criteria before being introduced into commerce.
- The criteria and process have been modified for EPA to order testing of chemicals under TSCA, and formal rulemaking processes and public comment periods will not necessarily be required for chemical testing.

- The criteria have been reduced for EPA to regulate existing chemicals under TSCA. In particular, language was removed that required EPA to use the “least burdensome” regulatory option.
- Criteria have been added for companies to substantiate claims of confidentiality under TSCA.
- States will be pre-empted from restricting a chemical use if EPA has already taken final action regarding the same chemical use or if an EPA risk assessment is pending. Pre-existing state regulations or state actions that do not restrict a chemical are not affected.
- EPA is authorized to assess fees from chemical manufacturers if they submit test data for EPA review, submit a premanufacture notice or a notice of new use, manufacture or process a chemical that is the subject of a risk evaluation, or request that EPA conduct a chemical risk evaluation.
- EPA is required to develop specific procedures and guidance for implementing the proposed law; these will be subject to public comment and to periodic review. EPA’s preliminary implementation plan is described in the link below.

<https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act>

2. FEDERAL: Proposed Risk Management Program Amendment

EPA is proposing to amend its Risk Management Program regulations (40 CFR 68) for chemical accident prevention under the Clean Air Act. This regulation requires risk management planning for facilities with processes that contain listed toxic or flammable chemicals in quantities exceeding applicable thresholds. The proposed revision includes a variety of changes, including:

- Facilities in certain industrial sectors would be required to conduct a safer technology and alternatives analysis and evaluate the feasibility of inherently safer technology as part of their Process Hazard Analysis.
- Facilities classified as Program 2 or Program 3 under the RMP regulation would be required to coordinate with local emergency responders at least once per year to confirm the availability of response resources and would also be required to conduct annual notification exercises. Facilities that maintain an on-site emergency response team would also be required to conduct drills at specified frequencies.
- Facilities classified as Program 2 or Program 3 would be required to conduct a formal root cause analysis in the event of a catastrophic release or near miss, including for processes that are decommissioned or destroyed as the result of the release. Additionally, certain facilities are required to conduct a compliance audit following a reportable release and EPA is proposing to amend this provision to require that the audit be performed by a third party.
- Facilities would be required to make certain information publicly available through a website or other means including names and Safety Data Sheets for regulated substances, emergency contact information, accident history, and procedures for informing the public in the event of a release. The proposed regulation also includes provisions for providing additional information to local emergency response agencies upon request and for conducting public meetings following a reportable release.
- Various content and formatting changes for Risk Management Plans submitted to EPA.
- Changes to definitions including the definition of “catastrophic release” and the addition of a definition for “root cause”.

<https://federalregister.gov/a/2016-05191>



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3. FEDERAL: Amendments to Recording and Reporting Workplace Injuries and Illnesses

OSHA has issued a revision to its Recording and Reporting Occupational Injuries and Illnesses regulation (29 CFR 1904). The amended regulation requires employers in certain industries to submit injury and illness data to OSHA electronically on an annual basis, with the content of reports consisting of injury or illness records that employers are already required to keep under existing OSHA regulations. OSHA indicates that it will post the submitted data on a publicly accessible Web site, omitting information that could be used to identify individual employees. Employers are also required to inform employees of their right to report work-related injuries and illnesses free from retaliation, and maintain a reasonable procedure for reporting work-related injuries and illnesses that does not deter employees from reporting. The first electronic reports will be due **July 1, 2017**.

<https://federalregister.gov/a/2016-10443>

4. FEDERAL: Exposure Standard for Crystalline Silica

OSHA has amended its occupational exposure standards by adding chemical-specific standard for respirable crystalline silica (29 CFR 1910.1053 for general industry and 29 CFR 1926.1153 for construction). The rule change lowers the Permissible Exposure Limit (PEL) to 50 $\mu\text{g}/\text{m}^3$ (8-hour time weighted average), and also establishes an action level of 25 $\mu\text{g}/\text{m}^3$ (8-hour TWA). The rule also contains provisions for employee protection such as exposure assessment requirements, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. Separate standards have been established for general industry and construction and provisions are included for coordination between the two standards in cases where construction tasks occur at a general industry workplace or vice versa.

The final rule is effective **June 23, 2016** and allows one year for construction employers and two years for general industry employers to comply with most provisions of the revised regulation.

<https://federalregister.gov/a/2016-04800>

5. FEDERAL: Delisting of tert-Butyl Acetate and HFE-347pcf2 as VOCs

EPA has delisted tert-butyl acetate (CAS # 540-88-5) and 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2; CAS number 406-78-0) from the regulatory definition of Volatile Organic Compounds. t-Butyl acetate is a solvent commonly found in paints, inks, and adhesives. TBAC was previously subject to a partial delisting and was not considered a VOC for purposes of VOC emissions limitations or VOC content requirements, but was considered a VOC for recordkeeping, reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs. HFE-347pcf2 is a precision cleaning agent used in a variety of industrial applications.

Delistings become effective automatically in New Hampshire which incorporates the federal list of exempt VOC by reference, and Massachusetts and Rhode Island also have the option of applying delistings at the state level. MassDEP has proposed to delist TBAC as a VOC as described below.

<https://federalregister.gov/a/2016-04072>

<https://federalregister.gov/a/2016-17789>

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

The EPA is proposing to add a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program, and would also list this category as a persistent and bioaccumulative toxic (PBT) chemical. HBCD is used primarily as a flame retardant in a variety of applications. Two CAS numbers are included under the proposed reporting category: 3194-55-6 and 25637-99-4. TRI reports for HBCD would be required for facilities that manufacture, process, or otherwise use more than 100 pounds of HBCD in a calendar year. Affected facilities in Massachusetts would also need to report for the HBCD category under the Toxics Use Reduction (TUR) program.

<https://federalregister.gov/a/2016-12464>

7. FEDERAL: Proposed Amendment to Hazard Ranking System

EPA has proposed an amendment to its Hazard Ranking System which is used for evaluating sites for inclusion on the National Priorities List under the Superfund program. The proposed revision would add a component to account for risk to human health due to subsurface intrusion for contaminants that enter regularly occupied structures through via the subsurface. The most common type of subsurface intrusion is vapor intrusion, but seepage of contaminated groundwater would also be considered. The risk from subsurface intrusion would be added as part of the score for the soil exposure pathway which is one of the four categories of pathways that are used to calculate the score for a site, and methodology for evaluating subsurface intrusion risk is described in the proposed rule change. EPA is not proposing to change other components of the ranking system or procedural requirements for adding sites to the NPL.

<https://federalregister.gov/a/2016-02749>

8. MASSACHUSETTS: Proposed Amendments to Air Regulations

MassDEP is proposing a significant amendment to the state air pollution control regulations at 310 CMR 7.00. The proposed revision includes a variety of changes described below.

Proposed changes affecting air permits and certifications include:

- A Plan Approval would be required for new facilities having the potential to emit more than 100,000 tons per year CO₂e of greenhouse gases, and for alterations to existing facilities that increase potential greenhouse gas emissions by more than 75,000 tons per year CO₂e. The proposed regulation does not specify whether a Limited Plan Approval or Comprehensive Plan Approval would be applicable. However, greenhouse gases would be removed from the Operating Permit (Title V) permit program.
- A Comprehensive Plan Approval would be required for non-major modifications of existing Prevention of Significant Deterioration (PSD) permits.
- The Comprehensive Plan Approval threshold for units burning distillate fuel oil would be increased from 30 million to 40 million Btu per hour.
- The list of “insignificant activities” listed in 310 CMR 7.00: Appendix C(5)(i) would be amended to only include surface coating and painting with non-refillable aerosol cans if the surface coating and painting are non-process related. Additionally, laboratory exhaust systems at commercial laboratories would no longer be an insignificant activity.
- Potential emissions from “insignificant activities” would need to be considered in major source applicability determinations.

- Several chemicals that have been delisted by the EPA as volatile organic compounds would also be delisted at the state level, including tert-butyl acetate as described above. The proposed regulation does not address HFE-347pcf2.
- The Environmental Results Program (ERP) certification submittal deadline for non-emergency engines would be changed to 30 days prior to startup. The existing ERP regulations do not currently specify an ERP certification deadline although the reporting instructions indicate that the form must be submitted within 60 days following startup.
- Certain stationary engine owners would have the option of applying for a Comprehensive Plan Approval instead of complying with ERP or Permit by Rule regulations.
- A 30-day public comment period would be required for approval of Comprehensive Plan Approval applications.
- Facilities claiming permit exemption under the *de minimis* exemption of 1 ton per year at 310 CMR 7.02(2)(b)7. would be allowed to demonstrate eligibility based on records of actual emissions.
- Facilities installing permit exempt air pollution control devices under 310 CMR 7.02(2)(b)1. would no longer be required to notify MassDEP 60 days in advance. The 30 day advance notice for replacement of existing devices under 310 CMR 7.02(2)(b)2. would still apply.
- The Electric Generating Unit mercury budget regulation would be removed.
- Provisions would be added detailing the procedure for requesting an adjudicatory hearing regarding permit decisions.

Proposed changes affecting air source registration reporting include:

- Various changes to source registration applicability. In particular, the applicability threshold for natural gas or distillate oil combustion would be increased to 10 million Btu per hour for each unit and 40 million Btu per hour facility wide. Also, the applicability threshold for lead would be decreased from 5 tons per year potential emissions to 0.5 tons per year actual emissions.
- The deadline for submitting air source registrations would be moved forward to March 1 for triennial filers. The deadlines for annual filers would not be affected.

Proposed changes affecting operating requirements include:

- Emergency engines under Permit by Rule or ERP regulations would no longer be subject to an operating limit of 300 hours per year. The operation of emergency engines would still be restricted to emergency situations and normal maintenance and testing, and engines would be subject to recordkeeping requirements that include tracking of the number of run hours and the reason for operation. The proposed rule does not indicate whether emergency engine owners would be allowed to assume a reduced number of operating hours other than 8,760 hours per year for the purposes of estimating potential emissions or conducting air dispersion modeling.
- Solvent metal degreaser operators would have the option to request EPA and DEP approval to use higher vapor pressure solvent or spray application for “high precision products” applications where required by military or other performance specifications. The proposed rule does not specify the procedure for requesting approval under this provision.
- The VOC content limit of 300 g/L for non-heatset printing operations under the ERP program would be extended to also apply to printers operating under Permit by Rule.
- Reasonably Available Control Technology (RACT) standards for VOC would be added for industrial cleaning solvents and fiberglass boat manufacturing. RACT requirements for VOC

would also be updated for a variety of source categories and the RACT standard for automobile surface coating would be rescinded. Additionally, provisions would be added such that future changes to RACT standards would be automatically incorporated by reference into Permit by Rule and ERP regulations.

- ERP regulations for printing operations would be amended to add emissions-based thresholds for classification as a large or mid-size printer, and would also add a category for very small printers. Various changes to the VOC content limits for materials used under the printer ERP regulations are also being proposed.
- RACT requirements for NO_x for major sources would be updated for large boilers, stationary combustion turbines, and stationary reciprocating internal combustion engines.
- The MassCAIR program would be replaced with new ozone season NO_x budget program regulations for consistency with EPA requirements. Facilities whose permitted NO_x emissions limits are already below the existing MassCAIR allocation would not be affected. The ozone season state-wide budget of 1,799 tons of NO_x would be maintained for the remaining facilities. In the event the state-wide budget is exceeded, facilities that exceeded their emissions budgets would be required to purchase CSAPR allowances to cover the excess emissions.
- In a separate rulemaking action MassDEP is also proposing to amend the CO₂ Budget Trading Program to allow Combined Heat and Power (CHP) CO₂ budget sources to deduct the CO₂ emissions associated with the production of useful net thermal energy from the budget sources' compliance obligations.
- In a separate rulemaking action MassDEP is also proposing changes to the asbestos program (310 CMR 7.15) to add provisions for repair and replacement of asbestos-cement pipe that support operating system networks for public and private utilities and make various other technical corrections.

Comments on the proposed regulation are being accepted until **September 26, 2016**.

<http://www.mass.gov/eea/docs/dep/air/laws/airdreg16.pdf>

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

MassDEP is proposing 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. The proposed revision includes a variety of changes, including:

- The ERP certification requirement for photo processors would be reduced from annual to one-time. Also, digital processing of color or black and white prints or slides would no longer be covered under photo processor ERP regulations.
- The existing printer ERP regulations classify printers as large, mid-size, or small. A fourth category would be added for very small printers and this category would no longer be subject to ERP certification requirements.
- The ERP certification requirement for dentists would be increased from once every five years to once every two years. The filing fee would be reduced to account for the increased submittal frequency. Also, the deadline for submitting the certification would be moved forward from June 15 to March 30.

<http://www.mass.gov/eea/docs/dep/service/regulations/allerpdrftreg.pdf>



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10. MASSACHUSETTS: Proposed Amendments to UIC Program Regulations

MassDEP is proposing amendments to the Underground Injection Control (UIC) regulations at 310 CMR 27.00. The proposed revision includes a variety of changes, including:

- Several types of injections would be 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 would be subject to a 48-day approval process by MassDEP; applications could also be approved presumptively.
- Class V injection wells for activities at single family residences would no longer be 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 would be removed. Licensed Site Professionals would be required to submit a registration by March 1, 2017 for wells in place as of September 1, 2016.
- The registration form for injection wells would be converted to an electronic registration process which filers would be required to use once it becomes available.
- Procedures would be added specifying requirements for well closure. Additionally, closure documentation would need to be submitted to MassDEP.
- Requirements would be 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 would be 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/eea/docs/dep/water/laws/rr/310cmr27rl.pdf>

11. MASSACHUSETTS: Proposed Restriction on Flame Retardants in Household Products

A proposed bill has passed in the state Senate and is currently under consideration in the state House of Representatives that would prohibit the sale in Massachusetts of bedding, carpeting, window treatments, or children's products having a component that contains more than 0.1% of certain listed chemical flame retardants. The proposed list of prohibited flame retardants includes antimony oxide and various brominated and chlorinated flame retardants, and MassDEP would be required to conduct a triennial review of whether to add additional flame retardants to the list based on certain toxicity criteria. Exceptions would be provided for pre-owned products, products containing recycled materials, and existing inventory manufactured prior to the effective date of the law. Manufacturers, importers and wholesalers of products containing prohibited flame retardants would also be responsible for notifying retailers that those products cannot be sold in Massachusetts.

<https://malegislature.gov/Bills/189/Senate/S2302>

<https://malegislature.gov/Bills/189/House/H4241>

12. MASSACHUSETTS and NEW HAMPSHIRE: Draft NPDES General Permit Available

EPA has issued a draft NPDES Remediation General Permit (RGP) for discharges from certain remediation activities in Massachusetts and New Hampshire. The RGP covers remediation activities from eight general categories: petroleum-related site remediation; non-petroleum-related site remediation; contaminated / formerly contaminated site dewatering; pipeline and tank dewatering; aquifer pump testing; well development / rehabilitation; dewatering / remediation of collection structures; and dredge-related dewatering. The draft RGP includes permit limitations and monitoring and reporting requirements for effluent flow (1 million gallons per day), pH, temperature and various other chemical parameters based on the type of remediation activity and the receiving water of the discharge. Operators would also be required to implement Best Management Practices and develop a Best Management Practices Plan for permitted discharges.

The previous RGP was issued in 2010 and expired in 2015. Facilities that were previously covered under the 2010 RGP will need to submit a Notice of Intent (NOI) to be covered under the updated RGP. The filing deadline for existing discharges would be 90 days after the effective date of the RGP and operators would need to provide sampling data along with the NOI for certain parameters depending on the type of discharge.

Comments on the draft general permit are being accepted until **September 19, 2016**.

<https://www3.epa.gov/region1/npdes/rgp.html>

13. NEW HAMPSHIRE: Proposed Regulatory Changes for Air Toxics Modeling

New Hampshire DES is proposing a number of changes to its regulations for air modeling of Regulated Toxic Air Pollutants (RTAP). In particular:

- The applicability of the air modeling rule has been changed to add exemptions for POTW's and pump stations, cooling towers, combustion of landfill gas, routine boiler maintenance, and use of isopropanol, nitrous oxide, and ethylene oxide at health care facilities.
- Toxicity classes and / or Allowable Ambient Levels have been adjusted for approximately 30 listed chemicals. Some values have been raised and some lowered.
- Four new chemicals have been added to the RTAP listing: peracetic acid, ethyl isocyanate, n, n-diethylhydroxylamine, and inorganic manganese compounds.

Comments on the proposed regulation are being accepted until **October 7, 2016**.

<http://des.nh.gov/organization/commissioner/legal/rulemaking/documents/env-a1400amd-ip.pdf>

14. RHODE ISLAND: Proposed Amendments to Air Regulations

Rhode Island DEM is proposing amendments to various sections of the state air pollution control regulations. The proposed revision includes changes affecting the following provisions:

- The sulfur content limit for alternative fuels would be increased from 500 ppm (current) and 15 ppm (starting July 2018) to 1% (current) and 0.5% (starting July 2018).
- Registration requirements for surface coating operations would be revised for consistency with RIDEM's general recordkeeping and reporting regulations. The rule would also exclude adhesives that are already regulated under the RACT rule for adhesives and sealants.
- Compliance testing for sources under the NOx emission standard would be reduced from annually to once every five years, and the tune up frequency for commercial and institutional

boilers would be reduced from annually to once every two years. Some amendments are also proposed to test methods and tune up procedures for consistency with federal requirements.

- The applicability for the wood products manufacturing standard would be revised to only apply to sources with the potential to emit 25 tons per year of HAP from wood products manufacturing, as opposed to 25 tons per year of HAP facility wide.
- The organic solvent cleaning RACT regulations would be revised to provide an exemption from certain requirements for cold cleaners smaller than 1 liter, provide an alternative means of compliance for spray gun cleaning operations, and allow users of certain machines additional time to compile monthly records.
- Several chemicals that have been delisted by the EPA as volatile organic compounds would also be delisted at the state level. The proposed regulation does not address tert-butyl acetate or HFE-347pcf2 which are newly delisted VOC as described above.

<http://www.dem.ri.gov/programs/benviron/air/pdf/pndefs16.pdf>

15. RHODE ISLAND: Proposed Amendments to Hazardous Waste Regulations

Rhode Island DEM is proposing amendments to the state hazardous waste regulations (regulation # DEM OWM-HW-01). The proposed revision includes changes affecting the following provisions:

- RIDEM currently requires that used electronic devices be managed as universal waste or hazardous wastes. This provision would be modified so as not to regulate e-waste that is not otherwise a hazardous waste, provided that it is being recycled. A federal exemption for shredding of circuit boards would also be recognized.
- RIDEM is proposing to delete a prohibition that forbids generators from storing polychlorinated biphenyl (PCB) wastes in satellite accumulation containers.
- RIDEM would become the permit authority for evaporators as opposed to the sewer authority.
- Generators and transporters would no longer be required to maintain and submit to RIDEM a list of authorized manifest signers.
- Accumulation standards would be added for waste paint collection standards to prevent accidental releases and avoid speculative accumulation.

<http://www.dem.ri.gov/programs/benviron/waste/pdf/draftwregs16.pdf>

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