



FEDERAL UPDATE

This Federal Update is prepared as a service by the Illinois Environmental Regulatory Group (“IERG”). It covers federal level activities including: announcements, regulatory proposals and final rules, updates, meetings, etc. This Update is for the period of December 1 through December 31, 2009.

PROPOSED RULES

1) **Primary National Ambient Air Quality Standard for Sulfur Dioxide (74 FR 64809)**

AGENCY: USEPA

PUBLICATION DATE: December 8, 2009

ACTIVITY DATES: Comments must be received on or before February 8, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before January 7, 2010.

SUMMARY: Based on its review of the air quality criteria for oxides of sulfur and the primary national ambient air quality standard (NAAQS) for oxides of sulfur as measured by sulfur dioxide (SO₂), EPA is proposing to revise the primary SO₂ NAAQS to provide requisite protection of public health with an adequate margin of safety. Specifically, EPA proposes to establish a new 1-hour SO₂ standard within the range of 50-100 parts per billion (ppb), based on the 3-year average of the annual 99th percentile (or 4th highest) of 1-hour daily maximum concentrations. The EPA also proposes to revoke both the existing 24-hour and annual primary SO₂ standards.

<http://edocket.access.gpo.gov/2009/pdf/E9-28058.pdf>

2) **Withdrawal of the Emission-Comparable Fuel Exclusion Under RCRA (74 FR 64643)**

AGENCY: USEPA

PUBLICATION DATE: December 8, 2009

ACTIVITY DATES: Comments must be received on or before January 22, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having their full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before January 7, 2010.

SUMMARY: EPA is proposing to withdraw the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel (ECF). These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA is proposing to withdraw this conditional exclusion because ECF appears to be better regarded as being a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this proposed rule.

<http://edocket.access.gpo.gov/2009/pdf/E9-29063.pdf>

3) **National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (74 FR 66469)**

AGENCY: USEPA

PUBLICATION DATE: December 15, 2009

ACTIVITY DATES: Comments. Written comments must be received on or before February 16, 2010.

SUMMARY: EPA received two petitions for reconsideration from trade associations representing their stakeholders regarding the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is proposing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this proposed action. We are seeking comments only on the proposed amendments presented in this action. We will not respond to any comments addressing other provisions of the final rules or any related rulemakings.

<http://edocket.access.gpo.gov/2009/pdf/E9-29570.pdf>

FINAL RULES

4) **Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (74 FR 62995)**

AGENCY: USEPA

PUBLICATION DATE: December 1, 2009

ACTIVITY DATES: This final rule is effective on February 1, 2010, 60 days after publication in the Federal Register.

SUMMARY: The Environmental Protection Agency is publishing final regulations establishing Clean Water Act (CWA) technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development (C&D) point source category. EPA expects compliance with this regulation to reduce the amount of sediment and other pollutants discharged from construction and development sites by approximately 4 billion pounds per year.

<http://edocket.access.gpo.gov/2009/pdf/E9-28446.pdf>

5) **National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing (74 FR 63503)**

AGENCY: USEPA

PUBLICATION DATE: December 3, 2009

ACTIVITY DATES: This final rule is effective on December 3, 2009.

SUMMARY: EPA is issuing national emission standards for control of hazardous air pollutants (HAP) for the Paints and Allied Products Manufacturing area source category. The final rule establishes emission standards in the form of management practices for volatile HAP, and emission standards in the form of equipment standards for particulate HAP. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the generally available control technology or management practices (GACT) for the area source category.

<http://edocket.access.gpo.gov/2009/pdf/E9-27947.pdf>

6) **Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Inclusion of Fugitive Emissions; Interim Final Rule (74 FR 65692)**

AGENCY: USEPA

PUBLICATION DATE: December 11, 2009

ACTIVITY DATES: The amendments to 40 CFR parts 51 and 52 in this rule are effective from December 31, 2009 through March 31, 2010. Effective December 31, 2009, the following CFR sections are administratively stayed until March 31, 2010: 40 CFR 51.165(a)(1)(v)(G), (a)(1)(vi)(C)(3), (a)(1)(ix), (a)(1)(xxviii)(B)(2), (a)(1)(xxviii)(B)(4), (a)(1)(xxxv)(A)(1),

(a)(1)(xxxv)(B)(1), (a)(1)(xxxv)(C), (a)(1)(xxxv)(D), (a)(2)(ii)(B), (a)(6)(iii), (a)(6)(iv), and (f)(4)(i)(D); 40 CFR 51.166, (a)(7)(iv)(b), (b)(2)(v), (b)(3)(iii)(c), (b)(3)(iii)(d), (b)(20), (b)(40)(ii)(b), (b)(40)(ii)(d), (b)(47)(i)(a), (b)(47)(ii)(a), (b)(47)(iii), (b)(47)(iv), (r)(6)(iii) and (r)(6)(iv), and (w)(4)(i)(d); 40 CFR part 51, Appendix S, paragraphs II.A.5(vii), II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), II.A.30(iv), IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d); and 40 CFR 52.21, (a)(2)(iv)(b), (b)(2)(v), (b)(3)(iii)(b), (b)(3)(iii)(c), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), and (aa)(4)(i)(d).

SUMMARY: EPA is making an interim final determination to provide an additional stay of the regulations concerning the inclusion of fugitive emissions.

<http://edocket.access.gpo.gov/2009/pdf/E9-29068.pdf>

7) Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (74 FR 66495)

AGENCY: USEPA

PUBLICATION DATE: December 15, 2009

ACTIVITY DATES: These Findings are effective on January 14, 2010.

SUMMARY: The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations. The Administrator also finds that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a). These Findings are based on careful consideration of the full weight of scientific evidence and a thorough review of numerous public comments received on the Proposed Findings published April 24, 2009.

<http://edocket.access.gpo.gov/2009/pdf/E9-29537.pdf>

8) Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export (74 FR 66411)

AGENCY: USEPA

PUBLICATION DATE: December 15, 2009

ACTIVITY DATES: This rule is effective January 1, 2010.

SUMMARY: EPA is adjusting the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs). This action allocates production and consumption allowances for HCFC-22 and HCFC-142b, as well as other HCFCs for which allowances were not allocated previously, for the control periods 2010-2014. This action also

establishes baselines for HCFCs for which EPA had not established baselines previously. The HCFC allowance system is part of EPA's Clean Air Act program to phase out ozone-depleting substances to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts, as well as other health and ecological effects. The U.S. is obligated under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) to limit HCFC consumption and production to a specific level and, using stepwise reductions, to decrease the specific level culminating in a complete HCFC phaseout in 2030. The next major milestone, to occur on January 1, 2010, is a 75 percent reduction from the aggregate U.S. HCFC baseline for production and consumption. The allowances allocated in this action ensure compliance with the international stepwise reduction, consistent with the 1990 Clean Air Act Amendments. In addition, this action amends the regulatory provisions concerning allowances for HCFC production for developing countries' basic domestic needs to be consistent with the September 2007 adjustments to the Montreal Protocol. Also, this action provides the Agency's interpretation of a self-effectuating ban on introduction into interstate commerce and use of HCFCs contained in section 605(a) of the Clean Air Act and amends existing regulatory provisions to facilitate implementation of the statutory requirements.

<http://edocket.access.gpo.gov/2009/pdf/E9-29569.pdf>

NOTICES

9) **Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Conditional Exclusion From Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes (74 FR 66259)**

AGENCY: USEPA

PUBLICATION DATE: December 15, 2009

ACTIVITY DATES: EPA will accept public comments on the Notice of Data Availability (NODA) published October 27, 2009 (74 FR 55163), until February 26, 2010. Comments submitted after this date will be marked "late" and may not be considered.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the document entitled "Conditional Exclusion from Hazardous and Solid Waste for Solvent-Contaminated Industrial Wipes," which appeared in the Federal Register on October 27, 2009. The public comment period for this document was to close on December 28, 2009. The purpose of this document is to extend the comment period for 60 days until February 26, 2010.

<http://edocket.access.gpo.gov/2009/pdf/E9-29804.pdf>

10) Integrated Science Assessment for Particulate Matter (74 FR 66353)

AGENCY: USEPA

PUBLICATION DATE: December 15, 2009

ACTIVITY DATES: The document will be available on or about December 15, 2009.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, "Integrated Science Assessment for Particulate Matter" (EPA/600/R-08/139F) and the supplementary annexes (EPA/600/R-08/139FA). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for particulate matter.

<http://edocket.access.gpo.gov/2009/pdf/E9-29591.pdf>

11) Notice of Availability of Preliminary 2010 Effluent Guidelines Program Plan (74 FR 68599)

AGENCY: USEPA

PUBLICATION DATE: December 28, 2009

ACTIVITY DATES: If you wish to comment on any portion of this notice, EPA must receive your comments by February 26, 2010.

SUMMARY: The Clean Water Act (CWA) sections 301(d), 304(b), 304(g), 304(m), and 307(b) require EPA to annually review its effluent guidelines and pretreatment standards. This notice presents EPA's 2009 review of existing effluent guidelines and pretreatment standards. This notice also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). Finally, this notice presents the Preliminary 2010 Effluent Guidelines Program Plan ("preliminary 2010 Plan"), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. EPA is soliciting comment on its preliminary 2010 Plan and on its 2009 annual review of existing effluent guidelines and pretreatment standards and industrial categories not currently regulated by effluent guidelines and pretreatment standards.

<http://edocket.access.gpo.gov/2009/pdf/E9-30625.pdf>

12) Stakeholder Input; Stormwater Management Including Discharges From New Development and Redevelopment (74 FR 68617)

AGENCY: USEPA

PUBLICATION DATE: December 28, 2009

ACTIVITY DATES: Written comments must be submitted on or before February 26, 2010.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its plans to initiate national rulemaking to establish a comprehensive program to reduce stormwater discharges from new development and redevelopment and make other regulatory improvements to strengthen its stormwater program. The purpose of this notice is to request input from the public to help EPA shape such a comprehensive program and to announce EPA's intent to hold several public "listening sessions" in January 2010. EPA seeks input on this undertaking regarding performance, effectiveness and cost of stormwater control measures; ecological data, including ecological benefits from stormwater controls; technical information on design, implementation and operation and maintenance of stormwater control measures; suggestions for how the existing program may be modified to better meet the goals of the Clean Water Act; and any other information that may help EPA develop improvements to the existing program, including better control of pollutants in stormwater from the built environment created by development and redevelopment.

<http://edocket.access.gpo.gov/2009/pdf/E9-30627.pdf>

OTHER

13) EPA Identifies Three Industries for Financial Obligations in Cleanup of Environmental Releases

WASHINGTON – The U.S. Environmental Protection Agency has taken a significant step in an effort to help reduce the need for federal taxpayers to fund the cleanup of environmental releases. The agency has identified three additional industry sectors for which it will begin the regulatory development process for any necessary financial assurance requirements: the chemical manufacturing industry; the petroleum and coal products manufacturing industry, which primarily includes refineries and not coal mines; and the electric power generation, transmission, and distribution industry.

Financial assurance requirements help ensure that owners and operators of facilities are able to pay for cleanup of environmental releases and help reduce the number of sites that need to be cleaned up by federal taxpayers through the Superfund program.

The identification of these industry sectors is part of EPA's effort under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund law, to examine if financial assurance requirements will help promote better environmental outcomes. The action announced today is not a proposed rule or a final regulation.

EPA selected these particular industries based on a variety of information sources. These include the types of sites listed on the Superfund National Priorities List, which is intended to guide the EPA in determining which sites warrant further investigation under the federal Superfund

program, as well as data on hazardous waste generation from the National Biennial Report and data from the Toxics Release Inventory.

Last July, EPA issued a notice that identified the hard-rock mining industry as its priority for the initiation of the regulatory development process for financial responsibility requirements. EPA plans to propose any appropriate financial responsibility rules by spring of 2011 for classes of facilities within the hard-rock mining industry. For the sectors identified today, EPA also will begin the regulatory process for developing appropriate financial assurance requirements.

In addition, EPA has identified the following additional classes of facilities that require further study in order for the agency to decide whether to develop proposed regulations: waste management and remediation services, wood product manufacturing, fabricated metal product manufacturing, electronics and electrical equipment manufacturing, and facilities engaged in the recycling of materials containing CERCLA hazardous substances.

EPA will be accepting public comment on this notice for 30 days after it is published in the Federal Register.

More information: <http://www.epa.gov/superfund/policy/financialresponsibility/index.html>

14) EPA Announces Actions to Address Chemicals of Concern, Including Phthalates

WASHINGTON - As part of Administrator Lisa P. Jackson's commitment to strengthen and reform chemical management, the U.S. Environmental Protection Agency (EPA) today announced a series of actions on four chemicals raising serious health or environmental concerns, including phthalates. For the first time, EPA intends to establish a "Chemicals of Concern" list and is beginning a process that may lead to regulations requiring significant risk reduction measures to protect human health and the environment. The agency's actions represent its determination to use its authority under the existing Toxic Substances Control Act (TSCA) to the fullest extent possible, recognizing EPA's strong belief that the 1976 law is both outdated and in need of reform.

In addition to phthalates, the chemicals EPA is addressing today are short-chain chlorinated paraffins, polybrominated diphenyl ethers (PBDEs) and perfluorinated chemicals, including PFOA. These chemicals are used in the manufacture of a wide array of products and have raised a range of health and environmental concerns.

EPA also recently announced that three U.S. companies agreed to phase out DecaBDE, a widely used fire retardant chemical that may potentially cause cancer and may impact brain function.

"The American people are understandably concerned about the chemicals making their way into our products, our environment and our bodies," said Administrator Jackson. "We will continue to use our authority under existing law to protect Americans from exposure to harmful chemicals

and to highlight chemicals we believe warrant concern. At the same time, I will continue to fight for comprehensive reform of the nation's outdated chemical management laws that ensures a full assessment of the safety of chemicals on the market today and effective actions to reduce risks where chemicals do not meet the safety standard. Chemical safety is an issue of utmost importance, especially for children, and this will remain a top priority for me and our agency going forward."

On September 29, 2009, Administrator Jackson outlined a set of agency principles to help inform legislative reform and announced that EPA would act on a number of widely studied chemicals that may pose threats to human health. When TSCA was passed in 1976, there were 60,000 chemicals on the inventory of existing chemicals. Since that time, EPA has only successfully restricted or banned five existing chemicals and has only required testing on another two hundred existing chemicals. An additional 20,000 chemicals have entered the marketplace for a total of more than 80,000 chemicals on the TSCA inventory.

The actions announced today include:

- Adding phthalates and PBDE chemicals to the concern list.
- Beginning a process that could lead to risk reductions actions under section 6 of TSCA for several phthalates, short-chain chlorinated paraffins, and perfluorinated chemicals.
- Reinforcing the DecaBDE phaseout – which will take place over three years – with requirements to ensure that any new uses of PBDEs are reviewed by EPA prior to returning to the market.

This is the first time EPA has used TSCA's authority to list chemicals that "may present an unreasonable risk of injury to health and the environment." The decision to list the chemicals further signals this administration's commitment to aggressively use the tools at its disposal under TSCA. Inclusion on the list publicly signals EPA's strong concern about the risks that those chemicals pose and the agency's intention to manage those risks. Once listed, chemical companies can provide information to the agency if they want to demonstrate that their chemical does not pose an unreasonable risk.

More information on EPA's legislative reform principles and a fact sheet on the complete set of actions on the four chemicals: <http://www.epa.gov/oppt/existingchemicals>

15) EPA Seeks Public Input on Interim Guidance for Dioxins in Soil Cleanup Goals

WASHINGTON - The U.S. Environmental Protection Agency (EPA) announced today it is seeking public comment on draft interim preliminary remediation goals (PRGs) for cleanup of dioxins in soil. Today's announcement fulfills a commitment by EPA Administrator Lisa P. Jackson to announce interim cleanup goals by the end of 2009. Dioxins are contaminants that are very widespread in the environment that have been of concern to EPA and the public health

community for decades. This action would strengthen EPA's preliminary remediation goals at dioxin contaminated sites.

“While EPA works to complete the dioxin reassessment, this interim guidance will help us make better informed decisions on cleanup alternatives at contaminated sites,” said Mathy Stanislaus, assistant administrator for EPA's Office of Solid Waste and Emergency Response. “We are following through on our commitment to use the best available science to help protect human health and the environment.”

Dioxins may cause a large number of different health effects, like cancer and reproductive effects. Dioxins are of concern because they are the result of combustion, and are absorbed from the air into the food chain where they can stay for many years.

Currently, EPA's recommended dioxin PRGs are 1,000 part per trillion (ppt) for dioxin in residential soil and a level within the range of 5,000-20,000 ppt in commercial/industrial soil. The draft interim PRGs proposed today are 72 ppt for residential land uses and 950 ppt for commercial/industrial land uses, thus lowering the amount of dioxins levels for residential land uses and commercial/industrial land uses.

In addition, the draft interim PRGs differ from the current dioxin PRGs in that they include consideration of the potential absorption of dioxin through skin exposure. This will provide a tool for site evaluation that was not available when EPA last recommended PRGs for dioxins in soil in 1998.

In 1991, in light of significant new data on the potential human health effects of dioxins, EPA began the development of a comprehensive evaluation of exposure and human health effects of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), the most toxic of the group of chemicals known as dioxins, and other dioxin-like compounds. This draft dioxins assessment has been through several independent external peer reviews, the latest a 2004 review by a scientific panel convened by the National Academy of Sciences. When the EPA dioxin risk assessment is complete, it will be the agency's scientific foundation for future decision-making about dioxins in the environment.

EPA will be taking public comment on the draft interim PRGs for 50 days following publication in the Federal Register, and anticipates issuing the final interim PRGs in June 2010. Upon completion of the dioxins reassessment, currently expected by the end of 2010, EPA will consider the need to update the interim PRGs.

More information on the draft recommended interim PRGs and how to comment:
<http://www.epa.gov/superfund/policy/remedy/sfremedy/remedies/dioxinsoil.html>

16) Statement from EPA on Coal Ash

WASHINGTON - EPA's pending decision on regulating coal ash waste from power plants, expected this month, will be delayed for a short period due to the complexity of the analysis the agency is currently finishing.

As part of her commitment to ensuring the protection of public health and the environment regarding coal ash, EPA Administrator Lisa P. Jackson had set a deadline to complete the regulatory decision before the close of this year. However, the agency is still actively clarifying and refining parts of the proposal.

Coal ash is a by-product of the combustion of coal at power plants, which is collected and later disposed of on land. Coal ash was brought prominently to national attention in 2008 when an impoundment holding disposed ash waste generated by the Tennessee Valley Authority broke open, creating a massive spill in Kingston, TN, that covered millions of cubic yards of land and river and is regarded as one of the worst environmental disasters of its kind in history. Shortly afterwards, EPA began overseeing the cleanup, as well as investigating the structural integrity of impoundments where ash waste is stored.

Administrator Jackson has been committed since the beginning of her Administration to complete these efforts, and expects to issue a proposed rule in the near future.