Recent Federal Proposed and Final Rules
May 2019
Outline

• Rulemaking and State Adoption
• Proposed Rules
  • Aerosol Cans
  • D001 and D002 Proposed Rule
  • Proposed Changes to the Manifest ICR
• Final Rules
  • Generator Improvement Rule
  • e-Manifest
  • Retail Strategy Update
  • Hazardous Waste Pharmaceutical Rule
Rulemaking

1. Advanced Notice of Proposed Rule Making
2. Solicit Public Comments
3. Proposed Rule
4. Receive formal comments on Proposed Rule
5. Publish Final Rule
Federal Rules and State Authorization

- Generally, once the Rule is signed and published in the Federal Register, it is available to be adopted by the states.
- Each state individually adopts the rule and it becomes enforceable in the that state.
- Each state submits and authorization package to EPA for review.
- Upon approval by EPA, the state rule becomes authorized and is only then federally enforceable.
- If the federal rule is less stringent, states are not required to adopt it. States are required to adopt more stringent federal rules or parts of rules.
- State rules may be broader in scope and more strict.
When aerosol cans are discarded by a business, a retail establishment, or a manufacturer, they are typically hazardous waste.

Aerosol cans are typically hazardous waste because many contain ignitable propellants and some contain contents that would also be a hazardous waste.

This means discarded aerosol cans generally must be managed under the hazardous waste generator regulations.
Aerosol Cans

- Existing state universal waste programs set standards for puncturing and draining aerosol cans by universal waste handers.
- Puncturing and draining an aerosol can as part of a metal container recycling process would be exempt from RCRA Permitting.
- Storage of hazardous waste aerosol cans prior to treatment would require a storage permit, unless exempt from permitting under another provision.
Aerosol Cans

- The Proposed Rule was published in the FR on March 16, 2018, to add aerosol cans to the universal waste (UW) rules.

- UW aerosol can regulations are expected to:
  1. ease regulatory burdens on retail stores and other universal waste generators,
  2. promote the collection and recycling of universal waste, and
  3. encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills or combustors.
Aerosol Cans

- The proposed rule allows for puncturing and draining of hazardous waste aerosol cans provided that:
  - Emptied, punctured aerosol cans are recycled,
  - Puncturing is conducted using a device specifically designed to safely puncture aerosol cans and contain residual contents and air emissions,
  - A written procedure is established detailing safe puncturing measures, including a copy of the puncturing device manufacturer instructions, and spill/release response,
• Employees operating the puncturing device are trained in the proper procedures,

• Puncturing is performed in a manner designed to prevent fires and releases into the environment, including locating the equipment on a solid, flat surface in a well-ventilated area,

• Contents from the punctured aerosol can are transferred to a container or tank meeting RCRA standards for the applicable generator category,

• A hazardous waste determination is conducted for the emptied aerosol can contents, and

• A spill kit is provided.
Benefits of UW Aerosol Can Rule

• Easier on-site management standards
  • 1 year accumulation time on-site
  • Don’t need to label containers to indicate hazard; only label as UW Aerosol Cans
• No manifest requirement for shipping
• Can send to another UW handler for collection before sending to a RCRA permitted disposal site
What’s Next for Aerosol Cans Rule?

- EPA is developing the Universal Waste Aerosol Can final rule
- Anticipate final rule in Fall 2019
- With the Universal Waste program, authorized states have to pick up the final rule once finalized before sites can begin to use the new provisions.
- Some states have already added aerosol cans to their universal waste program: California, Colorado, Minnesota, New Mexico, Ohio, Texas and Utah
Modernizing D001 Liquids Determination

Modernizing Ignitable Liquids Determinations Proposal

- Proposed rule published April 2, 2019 (84 FR 12539)
- Proposing revision of flashpoint methods (EPA Methods 1010A and 1020B required by 40 CFR 261.21(a)(1))
  - Proposed adds ASTM D8174-18 and D8175-18 to existing Methods
  - Instrumentation is no longer commercially available
  - Existing methods reference or require mercury thermometers
- Proposed to remove mercury thermometer requirements to five additional EPA SW-846 methods, which are Method Defined Parameters (MDP)
  - SW-846 Methods 10, 11, 20, 23a, 51
  - MDPs do not allow for flexibility to use non-mercury thermometers
Modernizing Ignitable Liquids Determinations Proposal

- Proposed codification of sampling guidance for multiphase mixtures
  - Proposed 261.21(a)(5) specifies a multiphase waste exhibits ignitability if either phase exhibits the characteristic

- Proposed codification of guidance for “aqueous” in aqueous alcohols exclusion
  - Proposed amendment of 261.21(a)(1) to specify “at least 50 percent water by weight”

- Seeking public input on the aqueous alcohols exclusion from ignitability (261.21(a)(1))
Modernizing D001 Liquids Determination

Modernizing Ignitable Liquids Determinations Proposal

• Rule proposed on April 2, 2019 (84 FR 12539)
  • Proposed flashpoint standards viewable at https://www.astm.org/epa.htm

• Public comment period ends June 3, 2019
  • Docket ID: EPA-HQ-OLEM-2018-0830

• More information available at https://www.epa.gov/hw-sw846/proposed-rule-modernizing-ignitable-liquids-determinations
In 2011, the NGO PEER and Dr. Jenkins submitted a rulemaking petition requesting the Agency to make two changes to the RCRA corrosivity hazardous waste definition:

- Change the regulatory level from pH 12.5 to pH 11.5
- Expand the scope of the regulation to include non-aqueous wastes (in addition to the aqueous wastes already covered)

Tentative Denial of the petition published April 11, 2016 (81 FR 21295)

Comment period closed December 7, 2016

29 comments on the Tentative Denial

The Agency is reviewing and developing responses to public comments to support a determination to grant or deny the petition.

Because of PEER’s lawsuit, the Agency is making quarterly reports to the Court
EPA is planning to submit the e-Manifest Information Collection Request (ICR) document to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA).

The PRA requires every federal agency to obtain approval from OMB before collecting recordkeeping and reporting information from 10 or more members of the public. Prior to OMB submission, EPA must publish a Federal Register Notice informing the public of the proposed collection of information.

ICRs generally provide:

- A description of the information to be collected;
- The reason the information is needed; and
- An estimate of the time and cost for the public to respond to the request.

The hazardous waste manifest ICR provides an overview of the recordkeeping and reporting requirements under RCRA and the Hazardous Waste Electronic Manifest Establishment Act, and provides estimates of costs and time for the public to respond.

Currently approved e-Manifest ICR expires 5/31/2019.
As part of EPA’s ICR effort, the Agency is requesting comment on how to:

- **Improve the precision of waste quantities and units of measure** reported on the hazardous waste manifest (both paper and electronic) by allowing usage of
  - Decimals or fractions in Item 11 of the manifest and
  - Smaller units of measure (ounces, grams, milliliters) in Item 12

- **Enhance the quality of international shipment data** reported on the manifest:
  - Add separate, distinct fields on the manifest so Exporters can record consent numbers for each waste stream and EPA ID #s if not the site initiating the shipment for export; and

- **Assist EPA with integrating e-Manifest and biennial reporting (BR) requirements**:
  - Require reporting of source and form codes and density information on the manifest
e-Manifest ICR – Request for Comment

• A Federal Register notice announcing EPA’s intent to submit the e-Manifest ICR to OMB for review and approval was published on February 8, 2019; 84 FR 2854
• Comments on specific aspects of the proposed ICR including the proposed amendments to the manifest forms had to be received by April 9, 2019
• Following closing of the comment period, EPA may make amendments to the manifest forms to be approved in May 2019 or in the future
Federal Final Rules
May 2019
Hazardous Waste Generator Improvement Rule
Hazardous Waste Generator Improvement Rule

• Final Rule was published in the FR on November 28, 2016 [81 FR 85732] and became effective on May 30, 2017

• https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements
The 2016 HW Generator Improvements Final Rule was published in the Federal Register on November 28, 2016 [81 FR 85732]

Over 60 changes to the Hazardous Waste Generator Program were finalized that:

- Reorganizes the regulations to make them more user-friendly and thus enables improved compliance by the regulated community
- Provides greater flexibility for hazardous waste generators to manage waste in a cost-effective manner through episodic generation and VSQG-LQG consolidation provisions
- Strengthens environmental protection by addressing identified gaps in the regulations
- Clarifies certain components of the hazardous waste generator program to address ambiguities and foster improved compliance

Goals of the Final Rule
Stringency of Final Rule

More Stringent:
- SQG re-notification
- Identifying hazardous of waste being accumulated and labeling
- Notification of closure
- Closure as a landfill for LQGs accumulating hazardous waste in container that cannot meet closure performance standards
- Biennial reporting for whole year, not just months the generator was an LQG
- Biennial reporting for recyclers who don’t store prior to recycling
- Quick Reference guide for contingency plans

Less Stringent
- VSQG consolidation
- Episodic generation
- Waiver from 50-foot rule
# Reorganization of Generator Regulations

<table>
<thead>
<tr>
<th>Provision</th>
<th>Existing Citation</th>
<th>Final Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generator Category Determination</td>
<td>§ 261.5(c)-(e)</td>
<td>§ 262.13</td>
</tr>
<tr>
<td>VSQG Provisions</td>
<td>§ 261.5(a), (b), (f)-(g)</td>
<td>§ 262.14</td>
</tr>
<tr>
<td>Satellite Accumulation Area Provisions</td>
<td>§ 262.34(c)</td>
<td>§ 262.15</td>
</tr>
<tr>
<td>SQG Provisions</td>
<td>§ 262.34(d)-(f)</td>
<td>§ 262.16</td>
</tr>
<tr>
<td>LQG Provisions</td>
<td>§ 262.34(a), (b), (g)-(i), (m)</td>
<td>§ 262.17</td>
</tr>
</tbody>
</table>
Electronic Hazardous Waste Manifest “E-Manifests” Rule
E-Manifest

• A national system for tracking shipments of hazardous waste

• Scope
  • Any hazardous waste required to be shipped on a manifest, except for exports
  • Any PCB waste required to be shipped on a manifest

• History
  • October 2012 – Hazardous Waste Electronic Manifest Establishment Act
  • February 2014 – Final Rule for the Modification of the Hazardous Waste Manifest System
  • December 2017 – Final Rule for User Fees

• June 30, 2018 – System Launched
Changes Since System Launch

• New paper manifest
• If using paper, destination facility must either upload the manifest into the system or mail paper to EPA
• If using electronic, all parties must be registered in the System
• Receiving facilities are required to pay fees, depending on type of manifest submittal
• Within 90-days manifest information becomes publicly available (EPA’s “RCRAInfo Web” website – Manifest Info)
Fees

Receiving facilities are required to pay fees to EPA based on the type of manifest received:

- **Paper** – $15
- **Image Only** – $10
- **Data + Image** – $6.50
- **Fully Electronic** – $4
Update on E-manifest System Statistics

• Average Daily Submission:
  • 5,500
• Original estimate: 3.5M/year
• Current pace: 2M/year
• Paper processing backlog
• Pie Chart of Manifest Submitted

  October 1 through March 31.
E-manifest Scope

- Covers all wastes shipped on a manifest pursuant to federal or state law.
  - Federal RCRA hazardous waste
  - Regulated PCB waste shipped on a manifest
  - “State-only regulated” hazardous waste (if manifest required by state)
  - Imports of hazardous waste shipped to U.S. facilities
- Exceptions:
  - HW exports not included in e-Manifest at this time.
  - Non-manifest documents (e.g., LDR notices) not included
- Current focus of program is on highway transport of domestic HW shipments
Common Mistakes with Mailed Manifests e-Manifest

1. Many Manifests that are disheveled, illegible, have multiple line partially crossed out, missing key information Receiving Facilities – Please have current phone number
2. Generators mailing paper manifest to EPA
3. Multiple generator/transporters/TSDF’s not signing or dating their manifests
4. No Managment Method Codes for Hazardous Waste
5. Incomplete PCB Information
   1. Load type
   2. Weight in KGs
   3. Earliest Date of remove from Service
6. Sites are not registering their facilities
- Cost savings and paperwork burden reductions
- Accurate, more timely information on waste shipments
- Creation of a single hub for reporting of manifest data
- More effective compliance monitoring by regulators
- Potential to integrate with RCRA BR and state systems
- Enhanced “cradle-to-grave” tracking of HW
Contact Us and stay informed

- Submit input/questions to eManifest@epa.gov
- Participate in our monthly webinars
- To subscribe to the general program Listserv. Send a blank message to: eManifest-subscribe@lists.epa.gov
- To subscribe to the developers only Listserv send a blank message to: e-manifestdev-subscribe@lists.epa.gov
- Visit the program web site: http://www.epa.gov/e-manifest
Retail Strategy Update
2016 Retail Strategy Commitments

• Finish rulemakings already underway:
  ✓ Definition of Solid Waste Rule
  ✓ Hazardous Waste Generator Improvements Rule
  ✓ Hazardous Waste Pharmaceuticals Rule

• Three new commitments:
  ✓ Propose to add aerosol cans to Universal Waste
  ✓ Develop a policy that addresses reverse flow processes for the retail sector as a whole (as part of pharmaceuticals rule)
  ✓ Issue guidance on recycling aerosol cans (as part of UW rule)
Management of Hazardous Waste Pharmaceuticals and Amendment to the Nicotine Listing (P075) Final Rule
Management Standards for Hazardous Waste Pharmaceuticals Final Rule

• The Final Rule was published on February 22, 2019 (84 FR 5816)

• Only those pharmaceuticals that are already considered hazardous waste will be covered by the new rule

• Rule bans the sewering of HW pharmaceuticals
Overview of Part 266 Subpart P

• Subpart P is a waste-specific and sector-specific final rule
  • for the management of hazardous waste pharmaceuticals
  • at healthcare facilities and reverse distributors
• These hazardous wastes and this sector are already regulated under RCRA
• We are not newly applying RCRA regulations to hazardous waste pharmaceuticals at healthcare facilities and reverse distributors
• We are changing HOW they are regulated under RCRA moving forward
Waste Specific & Sector Specific Rule

<table>
<thead>
<tr>
<th>Healthcare facilities &amp; reverse distributors</th>
<th>Hazardous Waste Pharmaceuticals</th>
<th>Other Hazardous Wastes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 266 Subpart P</td>
<td></td>
<td>• Part 262 (e.g., lab waste)</td>
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<td></td>
<td>• Part 273 (universal waste)</td>
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<tr>
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<td></td>
<td>• Part 279 (used oil)</td>
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<td>• Etc.</td>
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<tr>
<th>Other facilities (e.g., farms/ranches, reverse logistics centers, manufacturers)</th>
<th>Hazardous Waste Pharmaceuticals</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Part 262</td>
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Part 266 Subpart P Applicability

• Part 266 Subpart P is considered more stringent, and therefore is NOT optional for
  • States to adopt
  • Healthcare facilities and reverse distributors

• Hazardous waste pharmaceuticals must be managed under Part 266 Subpart P by:
  • All healthcare facilities that generate above VSQG amounts of hazardous waste
  • All reverse distributors

• Part 266 Subpart P is both waste-specific and sector-specific
state adoption - Nicotine amendment

• In authorized states, the amendment to the nicotine listing is effective only after the state adopts the amendment

• The amendment to the nicotine listing is considered LESS stringent, therefore:
  • Authorized states are NOT required to adopt the amendment to the nicotine listing
  • Authorized states do NOT have a deadline to adopt the amendment to the nicotine listing
Alan Newman  
Kentucky and Tennessee State Coordinator  
Export/Import Contact for Region 4  
Industrial Compliance Assistance Section  
US EPA Region 4 - Atlanta  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562 – 8589  
newman.alan@epa.gov