



SmallBiz@EPA

EPA's Asbestos and Small Business Ombudsman Program

A monthly newsletter for the regulated small business community

October 2020

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Policy & Regulation

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

On October 1, 2020, the EPA Administrator signed a final rule that will allow a major source of hazardous air pollutants (HAP) to reclassify as an area source at any time after taking steps to limit emissions. This final action amends the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions to provide sources that reduce emissions and potential to emit to below the major source thresholds (MST) the flexibility to reclassify as an area source. This rule also finalizes amendments to clarify the compliance dates, notification, and recordkeeping requirements that apply to sources choosing to reclassify to area source status and to sources that revert to major source status, including a requirement for electronic notification.

According to the [Final Rule Fact Sheet](#), this action implements EPA's current reading of the CAA discussed in the Agency's January 2018 guidance memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." The 2018 guidance withdrew the Agency's 1995 "Once In, Always In" (OIAI) policy, which stated that any facility subject to NESHAP as a major source would always remain subject to those standards unless the source reduced its potential to emit (PTE) below the MST before the first substantive compliance date. A pre-publication version of the notice, summary fact sheet and supporting information are available at: <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>

EPA Finalizes First Ever Rule to Promote Transparency in Developing Regulatory Guidance Documents

On September 14, 2020 at a speech in front of the Federalist Society, U.S. Environmental Protection Agency (EPA) Andrew Wheeler announced the final rule to establish consistent requirements and procedures for the issuance of guidance documents. The final rule follows the direction of President Trump's Executive Order to promote transparency through improved agency guidance practices throughout the federal government.

"Today's action is perhaps the biggest change in administrative procedures in a generation and one of the five pillars of EPA reform under President Trump," said EPA Administrator Andrew Wheeler. "This

historic rule guarantees the transparency the public deserves when engaging with the Agency. This is a massive step forward for EPA bringing these legal documents into the light.”

The final rule will significantly increase the transparency of EPA’s guidance practices and will improve the Agency’s process for managing guidance documents. The rule, among other elements, will:

- Establish the first formal petition process for the public to request that EPA modify, withdraw or reinstate a guidance document.
- Ensure that the Agency’s guidance documents are developed with appropriate review and are accessible to the public.
- Allow public participation in the development of significant guidance documents.

On October 9, 2019, President Trump issued Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents, to promote transparency by ensuring that all active guidance documents are made available to the public. A central principle of EO 13891 is that guidance documents should only clarify existing obligations and that they should not be a vehicle for implementing new, binding requirements on American businesses.

Prior to this recent action, on July 28, 2020, EPA finalized a guidance portal that provides public access to Agency guidance documents. In doing so, EPA brought over 9,000 guidance documents out of the darkness and made the entire set of active guidance available to the public for the first time. To access the portal, please visit: <https://www.epa.gov/guidance>.

For additional information on the rule, please visit: <https://www.epa.gov/laws-regulations/epa-guidance-administrative-procedures-issuance-and-public-petitions>.

EPA at 50: Disaster Recovery and Mitigation Efforts Help Communities Build Back More Resiliently

During the week of September 28, 2020, as part of its 50th anniversary commemoration, EPA’s Office of Homeland Security highlighted the Agency’s efforts to recover from and mitigate against natural and manmade disasters. The Agency provides mitigation and recovery support to state, local, territorial, and tribal partners when needed, through a number of headquarter and regional programs and under its National Oil and Hazardous Substances Contingency Plan (NCP) authority and responsibilities.

“The goal of our program is to build long-term resilience to disasters by applying EPA’s expertise and streamline federal action to support communities with both pre-disaster planning and promoting sustainable and resilient rebuilding after disasters,” said EPA Office of Homeland Security Associate Administrator Ted Stanich. “With the right planning and community engagement, our mitigation and recovery investments have the potential not only to strengthen resilience to disasters, but also to protect human health and the environment.”

EPA and FEMA have two Memoranda of Understanding (MOUs) that guide the help we provide both before and after disasters. One is to help communities hit by disasters rebuild in ways that protect the environment, create long-term economic prosperity, and enhance neighborhoods. The second establishes a framework for the EPA funded Clean Water SRF and Drinking Water SRF programs to streamline coordination between FEMA and the SRFs to enable funding to support essential infrastructure projects to be made available as quickly as possible.

The Agency focuses on linking environmental and human health within disaster mitigation and recovery by:

- Assisting federal, tribal, state, and local partners to develop better plans before disasters.
- Assessing and if necessary, responding to waste management and cleanup sites.
- Informing communities about rebuilding.
- Collaborating with other agencies to streamline federal oversight related to permitting, review, and/or enforcement requirements.
- Partnering with environmental justice communities to ensure meaningful engagement in recovery operations and planning.
- Assessing drinking water and wastewater facilities to determine operational status and environmental impacts and then provide funding for repairs through our State Revolving Loan Fund (SRF) program.
- Providing analytical support, technical and scientific expertise, and tools.
- Providing funding for issues such as wastewater and drinking water infrastructure; debris management and planning; and brownfields assessment and project implementation.

Read the full [press release](#). For more information about EPA’s homeland security efforts, visit <https://www.epa.gov/homeland-security>.

EPA Finalizes Power Plant Effluent Limitation Guidelines that Save Money and Reduce Pollution

On August 31, 2020, EPA announced final revisions to specific effluent guidelines and standards for “steam electric” power plants. The final rule revises a 2015 Obama-era regulation by leveraging newer, more affordable pollution control technologies and taking a flexible, phased-in implementation approach. As a result, the new rule will save the U.S. power sector approximately \$140 million annually while reducing pollution by nearly a million pounds per year over the 2015 rule.

“EPA’s revised steam electric effluent guidelines shows President Trump’s commitment to advancing American energy independence and protecting the environment,” **said EPA Administrator Andrew Wheeler**. “Newer, more affordable pollution control technologies and flexibility on the regulation’s phase-in will reduce pollution and save jobs at the same time.”

“President Trump and his Administration understand that protecting our water quality doesn’t have to destroy jobs and raise electric rates” **said U.S. Congressman David McKinley (WV-01)**. “These revisions to the Steam Electric Effluent Limitation Guidelines will actually reduce more pollution [than] the Obama-era rule, while reducing compliance costs and allowing for more flexibility. This is just the latest example of the Trump Administration’s commitment to promoting American energy while protecting public health.”

The Agency’s final Steam Electric Reconsideration rule revises requirements for two waste streams from steam electric power plants: flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. Key changes to the 2015 rule include:

- Changing the technology-basis for treatment of FGD wastewater and BA transport water.
- Establishing new compliance dates.
- Revising the voluntary incentives program for FGD wastewater.
- Adding subcategories for high-flow units, low-utilization units and those that will cease the combustion of coal by 2028 and finalizing requirements that are tailored to facilities in these subcategories.

The Agency considered input from a broad variety of stakeholders in developing the final rule and considered a wide range of data, information, and stakeholder input. The Agency also updated its

industry profile based on more recent data, conducted a limited information request, and collected voluntarily provided sampling data. For more information on EPA's final Steam Electric ELG Reconsideration rule, visit: <https://www.epa.gov/eg/2020-steam-electric-reconsideration-rule>.

Background

Under the Clean Water Act, EPA establishes regulations that apply to categories of industrial wastewater dischargers. Known as Effluent Limitations Guidelines and Pretreatment Standards (ELGs), these regulations are technology-based and protect public health and the environment by limiting wastewater discharges into surface waters and wastewater treatment plants.

In 2015, EPA issued a rule that established new ELGs for the nation's steam electric power plants. That rule was subject to legal challenge and the Agency received two petitions for administrative reconsideration, including one from the U.S. Small Business Administration's Office of Advocacy. In response, EPA agreed to reconsider the ELGs for two waste streams and undertook a rulemaking that changed the earliest compliance date in the 2015 rule from Nov. 1, 2018, to Nov. 1, 2020, to allow for reconsideration of the regulatory provisions.

This press release is available at:

<https://www.epa.gov/newsreleases/epa-finalizes-power-plant-effluent-limitation-guidelines-save-money-and-reduce>

Key Dates and Upcoming Opportunities

Small Business Environmental Roundtable: EPA's Final Risk Evaluations for Cyclic Aliphatic Bromide Cluster (HBCD), October 16, 2020 10:00 AM – 11:00 AM

Roundtable meetings are open to all interested persons, with the exception of the press, in order to facilitate open and frank discussion about the impacts of Federal regulatory activities on small entities. Agendas and presentations are available to all, including the press. Anyone who wants to receive roundtable agendas or presentations, or to be included in the distribution list, should forward such requests to david.rostker@sba.gov. The purpose of these Roundtable meetings is to exchange opinions, facts and information and to obtain the attendees' individual views and opinions regarding small business concerns. The meetings are not intended to achieve or communicate any consensus positions of the attendees.

EPA recently published its final risk evaluation for the third of its 10 high-priority chemicals under the amended Toxic Substances Control Act (TSCA). On June 24, 2020 EPA published a risk evaluation for [HBCD](#), finalizing determinations of unreasonable risk for 6 out of 12 evaluated conditions of use. EPA found the import, processing, recycling, commercial use, consumer use, and disposal of HBCD present unreasonable risks to the environment and the use of HBCD in building and construction materials and exposure through demolition present an unreasonable risk to workers and occupational non-users. A final determination that a condition of use presents an unreasonable risk of injury to health or the environment means that the Agency will have to regulate those risks, which can include use-restrictions or bans, among other options.

EPA is currently in the process of developing ways to address the identified unreasonable risks and has up to one year to propose and take public comments on any risk management actions. Within this time frame, the Agency will also have to consider whether any potential regulations for the identified risks will have a significant economic impact on a substantial number of small entities and if so, the Agency

will need to convene a small business advocacy review panel to seek advice and recommendations from representatives of affected small entities on the potential impact of the proposed rule. For this reason, it is important for small business stakeholders to be informed of the conditions of use that have been determined to pose an unreasonable risk and the basis for those determinations. At this roundtable, EPA will be providing an overview of this final risk evaluation, with time for discussion and questions. [Read the roundtable meeting announcement.](#)

EPA Works with States, Tribes, and Communities to Protect Public Health and the Environment

Throughout its history, EPA has collaborated with external parties to address high priority environmental and public health challenges. As one of the world's leading environmental and human health research organizations, EPA provides scientific and technical support to various groups, including states and tribes. These collaborative efforts have improved EPA's ability to fulfill its mission across the country.

Working with States to Address Environmental Problems

Today, some of EPA's most critical partnerships are with states. State agencies have an on-the-ground perspective of environmental problems impacting communities, which can help inform EPA of local-level challenges, such as reducing the risk of exposure to chemicals; cleaning up contaminated sites in ways that help revitalize local communities; protecting drinking water; keeping the air clean; and responding to biological, chemical, or radiological events. [Learn more.](#)

Ask SBEAP

Dear SBEAP,

My uncle operates a small, ready-mixed concrete batch plant in a rural area and has never had to worry about complying with much more than zoning ordinances. However, he has received a letter from the state department of environmental quality notifying him an inspector will be coming to talk about permitting and compliance. What can I tell my uncle to expect?

Rocky Clinker

Dear Rocky:

Your uncle's worries are common among many business owners having a similar experience for the first time. Each state deals with environmental permitting and compliance in its own way; however, there are some basic environmental areas (called media) that most ready-mixed concrete (RMC) facilities impact.

Water – Process wastewater is produced from rinsing off trucks as they leave the facility and rinsing out the truck barrels as they return. Stormwater that falls on the facility must typically be addressed as well.

Air – Environmental air issues are typically caused by dust and particulate matter coming from the movement, mixing and storage of concrete-related materials. RMC facilities using stationary engines and boilers must also account for the emissions from those sources.

Solid Waste – Solid-waste issues typically arise from improper storage and management of aggregates, barrel washout solids and batch leftovers.

Your uncle should be prepared to discuss how his RMC facility identifies and manages these impacted media. Logistical records, equipment descriptions and material receipts can help him organize his answers. He could also reach out to an industry trade organization for reassurance that environmental compliance and running a successful RMC facility can happen together.

In addition to the National SBEAP and EPA hyperlinks in the media identifiers above, the EPA has a website dedicated to the concrete industry sector located [here](#). And your uncle can always ask his local SBEAP representative for more specific help than the brief overview given above. To find your state SBEAP, [click on this map](#). If he needs additional assistance, he can email [Ask SBEAP](#) or call us at 800-578-8898.

Spotlight

Regulatory Navigation Tool: Subpart HHHHHH National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

The new [6H Regulatory Navigation tool](#) is now available to help autobody shops determine if they can be exempt from the rule. [Regulation Navigation \(Reg Nav\) tools](#) help owners and operators of facilities in certain industries determine the requirements of specific air quality regulations. Reg Nav tools are online and interactive, and use the information entered to assess potential regulatory requirements. Reg Nav tools do not store or save information, so you must print or save any output that you want to use or reference. Special thanks to North Carolina's Small Business Ombudsman, [Tony Pendola](#), at the Division of Environmental Assistance and Customer Service for his contribution in delivering this new tool!

EPA Announces \$5 Million in Community-Scale Air Toxics Monitoring Grant Winners

On September 28, 2020, EPA announced the selection of 11 air toxics monitoring projects to receive \$5 million in funding under the Agency's Community-Scale Air Toxics Ambient Monitoring grants program. These grants will help monitor and provide important information to communities on air toxics, including ethylene oxide, chloroprene, benzene, 1,3-butadiene, and toxic metals. [Read the full press release](#). To learn more about the Community-Scale Air Toxics Ambient Monitoring grants, visit: <https://www.epa.gov/amtic/community-scale-air-toxics-ambient-monitoring-csatam>.

Velázquez, Chabot Introduce Resolution in Honor of National Small Business Week

On September 22, 2020, the House Small Business Committee Chairwoman Nydia M. Velázquez (D-NY) and Ranking Member Steve Chabot (R-OH) introduced a [resolution](#) to recognize September 22nd to September 24th as National Small Business Week. The week has been observed annually since 1963 to commemorate the contributions of small business owners and their more than 60 million employees. "National Small Business Week is a celebration of America's 30 million-plus small businesses and all that they do for our communities and economies," said Chairwoman Velázquez. "As we celebrate this year, small firms across the country face unprecedented challenges, but their entrepreneurial spirit remains as strong as ever. For more information, visit: <https://smallbusiness.house.gov/news/documentsingle.aspx?DocumentID=3435>

Share with the small business community through EPA's SmallBiz@EPA Bulletin

Do you have a story, upcoming event, resource, or information that may be beneficial to the small business community? Please email us at ASBO@epa.gov to provide a brief submission with a suggested title, your contact information, and a website link for more information on the topic.

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