

**RCRA UPDATE: FEDERAL AND STATE STATUTORY,
REGULATORY, AND JUDICIAL DEVELOPMENTS
IMPACTING WASTE MANAGEMENT**



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**AIR & WASTE MANAGEMENT
ASSOCIATION
GULF COAST CHAPTER**

February 25, 2020 Luncheon

On Today's Menu

Federal and Texas RCRA Developments In:



Rulemakings



Cases/Decisions/
Orders



Enforcement

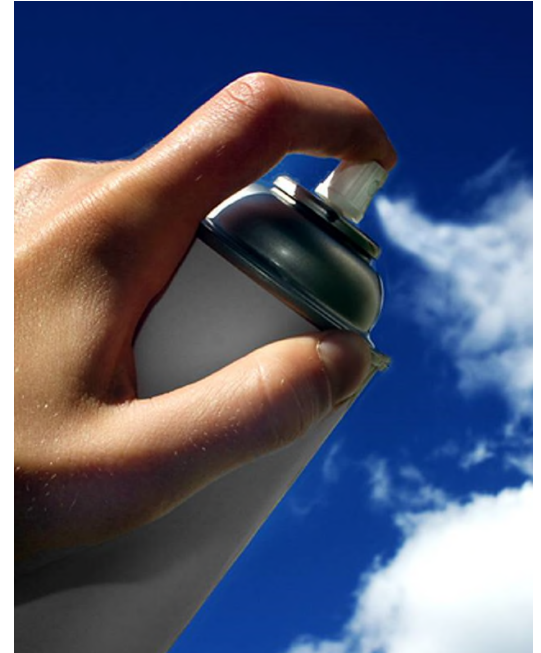


Rulemakings

Rulemakings: EPA

Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

- Final Rule: 84 Fed. Reg. 67,202 (Dec. 9, 2019)
- Docket No.: EPA-HQ-OLEM-2017-0463
- Effective: Feb. 7, 2020
- Requirements for puncturing and draining aerosol cans by UW handlers
- Authorized states not required to add aerosol cans to UW list



Rulemakings: EPA

Modernizing *Ignitable Liquids* Determinations

- Proposed Rule: 84 Fed. Reg. 12,539 (Apr. 2, 2019)
- Docket No.: EPA-HQ-OLEM-2018-0830
- Comments Closed: June 3, 2019 (17 comments)
- Update flash point test methods for determining if liquid is characteristically ignitable
- Codify EPA interpretation of aqueous alcohol exclusion
- Codify sampling guidance for multiphase wastes
- Allow uses of non-mercury thermometers in certain test methods



Rulemakings: CCR

EPA: Federal CCR Permit Program

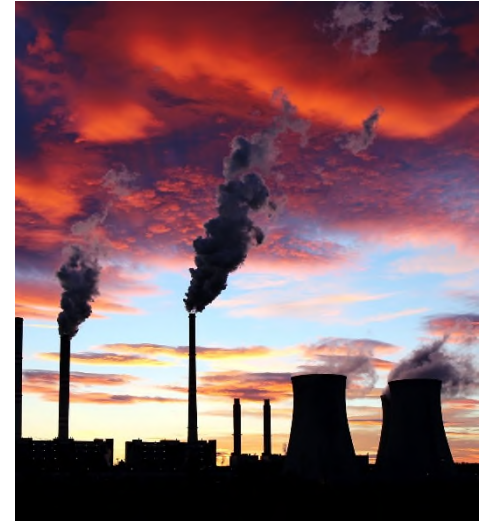
- Proposed Rule: 85 Fed. Reg. 9940 (Feb. 20, 2020)
- Docket No.: EPA-HQ-OLEM-2019-0361
- Public Hearing: Apr. 15, 2020 (virtual/online only)
- Comments Close: Apr. 20, 2020
- New 40 CFR Part 257, Subpart E
- Federal permits mandatory for CCR units in nonparticipating states
- Three permit types: general permit, permit by rule, individual permit (default approach)
- Utilizes general EPA administrative procedures in Parts 22 and 124 applicable to RCRA permits



Rulemakings: CCR

EPA: A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure

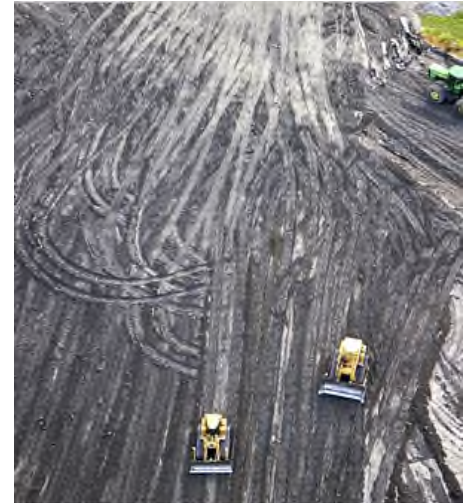
- Prepublication Proposed Rule (Feb. 19, 2020)
- Docket No.: EPA-HQ-OLEM-2019-0173
- Allow existing impoundments to request approval to operate with an alternate liner
- Allow use of CCR during unit closure
- Provide additional closure option for units being closed by removal
- Establish requirements for annual closure progress reports



Rulemakings: CCR

EPA: A Holistic Approach to Closure Part A: Deadline to Initiate Closure

- Proposed Rule: 84 Fed. Reg. 65,941 (Dec. 2, 2019)
- Docket No.: EPA-HQ-OLEM-2019-0172
- Comments Closed: Jan. 31, 2020 (67,215 comments)
- Clay-lined impoundments are “unlined” and all unlined impoundments required to retrofit or close
- Revise deadline by which unlined impoundments and impoundments that failed aquifer location restriction must initiate closure or retrofit
- Allow facilities time to develop alternate waste capacity to before initiating closure



Rulemakings: CCR

EPA: Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles

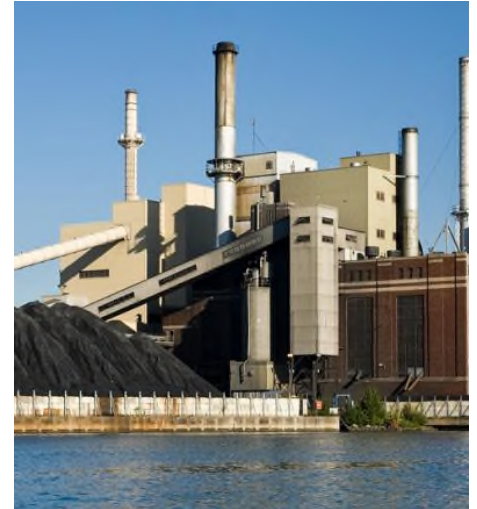
- Proposed Rule: 84 Fed. Reg. 40,353 (Aug. 14, 2019)
- Docket No.: EPA-HQ-OLEM-2018-0524
- Comments Closed: Oct. 15, 2019 (129,872 comments)
- Replace 12,400-ton threshold for environmental demonstration with location-based criteria
- Establish single approach for all temporary placement of unencapsulated CCR on the land
- Make annual groundwater monitoring and corrective action data easier to understand and evaluate; requirement to summarize results in executive summary
- Establish alternative groundwater protection standard for boron
- Revise CCR website requirements to ensure information is immediately available to public



Rulemakings: CCR

TCEQ: Chapter 352, CCR Waste Management & Registration Program

- Rule Project No.: 2017-037-352-WS
- Proposed Rule: 44 Tex. Reg. 7641 (Dec. 13, 2019)
- Public Hearing: Jan. 9, 2020
- Comments Closed: Jan. 31, 2020
- Anticipated Adoption: May 6, 2020
- Create Chapter 352, adopt federal CCR requirements, implement CCR registration and compliance monitoring program
- Registration application due within 365 days of effective date
- No permit requirement; no contested case hearing opportunity



Rulemakings: TCEQ

RCRA Rule Package 1: HB 1953 & Phase I: RCRA Authorization for Parts of Federal Rule Clusters XXIV, XXV, and XXVII

- Rule Project No.: 2019-085-335-WS
- Proposed Rule: 45 Tex. Reg. 271, 277 (Jan. 10, 2020)
- Comments Closed: Feb. 11, 2020
- Anticipated Adoption: May 20, 2020
- Revise IHW regulations to maintain equivalency with revisions to federal regulations (made Apr. 8, 2015 to Nov. 30, 2018)
- Implement HB 1953: Exclusion for conversion of plastics and other recyclable material through pyrolysis or gasification
- Repeal § 305.149: *Time Limitation for Construction of Commercial Hazardous Waste Management Units*



Rulemakings: TCEQ

RCRA Rule Package 2

- Rule Project No.: 2019-086-335-WS
- Informal Stakeholder Meeting: July 26, 2019
- Anticipated Proposal: Sept. 2020
- Tentatively Includes:
 - HW Generator Improvements Rule
 - Response to Vacatur of Certain Provisions of DSW Rule
 - Management Standards for HW Pharmaceuticals
 - Confidentiality Determinations for HW Export/Import Documents
 - E-Manifest System User Fee
 - Foundry Sands



Rulemakings: TCEQ

IHW Generator and Management Fees Increase

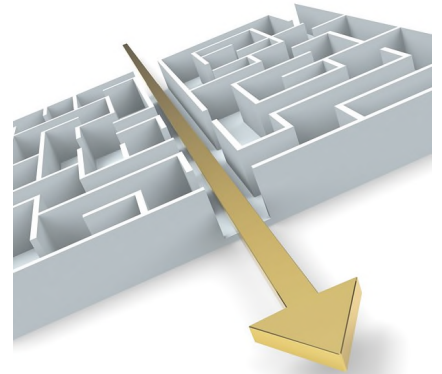
- Rule Project No.: 2020-010-335-WS
- Anticipated Proposal: June 10, 2020
- Anticipated Comment Period: June 26 - July 27, 2020
- Anticipated Adoption: Nov. 4, 2020
- Generator fee (§ 335.323)
 - Increase from \$0.50 to max \$2.00 per ton for non-hazardous, and from \$2.00 to max \$6.00 per ton for hazardous
- Management fee (§ 335.325)
 - Increase by 35%; allow E.D. to adjust up to max based on yearly trends in disposal amounts
 - Phase in over 5 years (i.e., 7% a year increase)



Rulemakings: EPA

Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals

- Proposed Rule: 84 Fed. Reg. 66,084 (Dec. 3, 2019)
- Docket ID: EPA-HQ-OGC-2019-0406
- Comments Closed: Jan. 2, 2020 (30 comments)
- Applies to permit decisions made by or on behalf of EPA
- New, time-limited ADR process as a precondition to judicial review in federal court (i.e., administrative exhaustion)
- Scope of EAB review limited to findings of fact and conclusions of law that are clearly erroneous
- Allows EPA G.C. to issue dispositive legal interpretation in any EAB case or on any issue addressed by EAB (including enforcement cases)



Cases / Decisions / Orders

Cases/Decisions/Orders: Federal

Environmental Technology Council v. EPA, Docket No. 19-1215, D.C. Cir. (filed Oct. 17, 2019)

- HW recycling and TSD industry suit over increase in user fees under e-manifest system
- Asks court to set aside revised fee schedule and order refunds to industry
- Oct. 1, 2019, user fees per manifest increased 60-115%, with rates locked for 2 years



Cases/Decisions/Orders: **Federal**

In re Final RCRA Permit for Vickery Environmental, Inc., Docket No. OHD 020 273 819, EAB (filed Oct. 7, 2019)

- Permittee appeal of permit that includes OSHA worker safety requirements
- Permittee argues EPA has no authority to require OSHA compliance
- EPA relies on its “omnibus authority” to protect human health and the environment under RCRA § 3005(c)(3)



Cases/Decisions/Orders: Federal

California Communities Against Toxics v. EPA, 928 F.3d 1041 (D.C. Cir. July 2, 2019)

- Challenge to DSW rule transfer-based exclusion
- Argued generators discard hazardous secondary materials by paying third-party to recycle them
- Transfer-based exclusion upheld:
 - EPA determination that legitimate recycling of hazardous secondary materials did not constitute “discard” was reasonable
 - Transfer-based exclusion not arbitrary and capricious



Cases/Decisions/Orders: TCEQ

Application by Altair Disposal Services, LLC, for Permit No. IHW-50407, TCEQ Docket No. 2018-0013-IHW/SOAH Docket No. 582- 18-1960

- New non-commercial, hazardous waste landfill in Altair, Colorado County
- Commission Decision/Order (Sept. 11, 2019 Agenda): Denied



Cases/Decisions/Orders: TCEQ

Application by MedCare Environmental Solutions, Inc., for Medical Waste Processing Registration No. 40294, TCEQ Docket No. 2019-0202-MSW

- New medical waste processing facility
El Paso
- Commission Decision/Order (Aug. 28, 2019 Agenda):
 - Motions to Overturn: Granted
 - Application: Denied



Cases/Decisions/Orders: TCEQ

Application by City of Temple for Permit No. MSW-692B, TCEQ Docket No. 2017-1779-MSW/SOAH Docket No. 582-18-3435

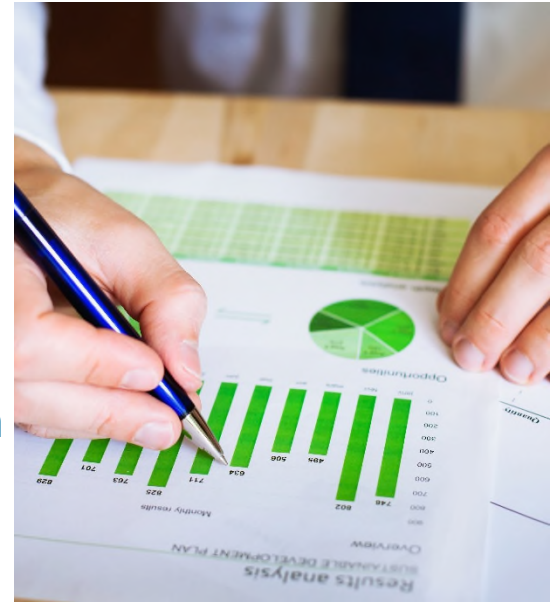
- Expansion of Temple Recycling & Disposal Facility
- Commission Decision/Order (Apr. 24, 2019 Agenda): Granted



Enforcement

EPA Enforcement Annual Results – FY19

- Enforcement actions resulted in treatment/minimization/disposal of **4.74M lbs.** of hazardous and nonhazardous waste
 - **Down** more than two orders of magnitude from **541.49M lbs.** in FY18
 - **Down** from **245.57M lbs.** in FY17
 - **All-time low** since tracking statistic in FY12, *and* EPA only started combining reductions in hazardous and nonhazardous waste in FY16
- **99% reduction** in solid/hazardous waste cleanups from FY18



TCEQ Annual Enforcement Report – FY19

- % of Inspected Waste Facilities in Compliance: 97%
- # of Administrative Orders Issued by Media: Waste = 396
- % of Orders Issued by Media: Waste = 31%
- Estimated Pollutant Reductions (lbs.) from Orders Issued:
 - MSW: 17,052,739
 - Industrial Waste: 315,684
 - Listed Waste: 6,914



Thank You!



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