

John Therriault - R09-16/R10-4 RCRA Subtitle C Update

PCAL

From: Mike McCambridge
To: Therriault, John
Date: 8/19/2010 8:45 PM
Subject: R09-16/R10-4 RCRA Subtitle C Update
CC: <Westefer.Gary@epamail.epa.gov>; Crowley, Kathleen; Girard, Tanner

Gary Westefer of USEPA Region 5 called to convey comments on the R09-16/R10-4 RCRA Subtitle C proposal. He tried to send the comments by e-mail, but our system is down. He called, and I memorialize the call by this e-mail.

Please place a copy of this e-mail in the docket as a public comment.

1. re 721.104(a): the text of 40 C.F.R. 721.104(a)(25)(i)(B) requires use of the U.S. DOT proper shipping name, hazard class and identification number "as identified in 49 CFR parts 171 through 177." The Board used "as identified in 49 CFR 171 through 173." Why? Answer: The topical headings of the USEPA-cited U.S. DOT requirements cited by USEPA are as follows:

- 171 General information, regulations, and definitions
- 172 Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements
- 173 Shippers--general requirements for shipments and packagings
- 174 Carriage by rail
- 175 Carriage by Aircraft
- 176 Carriage by vessel
- 177 Carriage by public highway

Response: The USEPA-required information appears in 49 C.F.R. 172. The hazardous materials classes are defined in 49 C.F.R. 173. The general provisions that define the use of 49 C.F.R. 172 and 173 appear in 49 C.F.R. 171. The other four parts (49 C.F.R. 174, 175, 176, and 177) prescribe requirements for particular modes of transportation without affecting the USEPA-required information.

Reply: Mr. Westefer explained that this adequately explained the change to a narrower citation by the Board, and that the narrower citation was adequate in light of this explanation.

2. The prohibition against dilution of 40 C.F.R. 261.38(a)(6) is missing from Section 721.138(a)(6).

Response: This was an inadvertent error that will be corrected for final adoption.

3. In Section 721.138(b)(4)(c) the language "analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate" should not be overstruck.

Response: This was an inadvertent error that will be corrected for final adoption.

4. Region 5 will pass on to USEPA HQ the corrections to the chemical names and CAS numbers in Appendix Y to Part 721, since the names and numbers in corresponding 40 C.F.R. 261.38 table do not agree with those in appendix VIII to 40 C.F.R. 261.

Response: No Board action will be necessary.

5. Why was the item number "11" in 40 C.F.R. 262.203(b) and 262.204(b) changed to "13" in corresponding

Sections 722.303(b) and 722.304(b)?

Response: The Board used the item numbers and titles as used in USEPA Form 8700-12 in quotation marks.

Reply: Mr. Westefer indicated that this explanation was satisfactory.

6. In Section 722.311(c), "arge quantity generator" should appear as "large quantity generator."

Response: This was an inadvertent error that will be corrected for final adoption.

7. The Board corrections in the Board notes to Sections 724.152(b) and 725.152(b) of "Office of Solid Waste" to "Office of Resource Conservation and Recovery" are necessary and appropriate.

8. USEPA has amendments to the DSWR under development, and development documents are circulating throughout USEPA relative to proposal of amendments to the DSWR in 2011. Many of the numbered Board requests for comments deal with issues discussed in those development documents. The documents are not available outside USEPA at this time.

9. USEPA is still withholding authorization of Illinois RCRA Subtitle C amendments adopted since 1995. While issues have been resolved relative to the environmental audit privilege of section 52.2 have been resolved, problems have arisen relative to the limitation on liability in section 58.9 of the SRP program. While section 58.9(a)(1) clearly states that the SRP limitation does not apply to RCRA facilities, section 58.9(a)(2) equally clearly states that the SRP limitation applies "notwithstanding any other provisions in this Act to the contrary." Illinois courts have come down on both sides. Mr. Westefer stated that a legislative fix that was satisfactory to USEPA was on the floor in Springfield last year, but was withdrawn before adoption of the bill. Region 5 is trying to obtain at least partial authorization of the last several years of amendments to the Illinois program. The lack of authorization has produced the anomalous result that unauthorized provisions are not enforceable as a matter of federal law, and the corresponding federal provisions are also not enforceable unless they are HSWA-based provisions.

Response: The Board is advised, but can do nothing. The Agency is the lead State agency with regard to these types of concerns.

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