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Applicability of RCRA Organic Air Emission Standards to Equipment and/or Closure Devices/Subpart BB v. Subpart CC: U.S. Environmental Protection Agency Guidance Memorandum

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The United States Environmental Protection Agency (“EPA”) issued a December 22, 2021, memorandum titled:

Applicability of RCRA Organic Air Emission Standards to Equipment and/or Closure Devices, Subpart BB versus Subpart CC (“Memo”)

The Memo is transmitted from EPA Office of Resource Conservation and Recovery Director Carolyn Hoskinson to the Land, Chemicals and Redevelopment Division Directors (Regions 1-10) and Enforcement and Compliance Assurance Division Directors (Regions 1-10).

The stated purpose of the Memo is to provide guidance to EPA and state permit writers and inspectors for:

. . . determining whether certain equipment and/or closure devices located on covers of hazardous waste tanks, containers, and surface impoundments are subject to Subpart BB or Subpart CC of the Organic Air Emission Standards under the Resource Conservation and Recovery Act (“RCRA”).

The focus is the agency’s view as to the correct application of Subpart BB and Subpart CC to equipment and/or closure devices. This is to better ensure a consistent federal interpretation of the RCRA Organic Air Emission Standards.

Section 3004(n) of RCRA required EPA to develop standards to monitor and control air emissions from hazardous waste treatment, storage and disposal facilities. EPA has implemented this requirement by promulgating regulations known as the RCRA Organic Air Emission Standards (“Standards”). The different components of these Standards include:

- Subpart AA (Controls for air emissions from certain process vents)(processes/devices include distillation, fractionation, thin-film evaporation, solvent extraction and air steam stripping units)

- Subpart BB (Controls for air emissions from specified equipment leaks)(processes/devices include pumps, compressors, pressure relief devices, sampling connecting systems, open-ended valves or lines, valves, flanges, and other connectors)
- Subpart CC (Controls for air emissions from certain tanks, containers and surface impoundments)(processes/devices include tanks, containers and surface impoundments)

A key focus of these Standards has been to encourage routine facility maintenance.

The Standards apply to:

- Hazardous waste treatment, storage and disposal facilities (permitted and interim status)
- Recycling units at hazardous waste management facilities otherwise subject to permitting standards
- Large quantity generators with less than 90-day accumulation tanks and containers

EPA initially notes in the December 22, 2021, Memo that questions arise about the applicability of Subpart BB or Subpart CC because:

. . . closure devices, which is the term used in Subpart CC, are similar to certain equipment, including valves and pressure relief devices, that are regulated by Subpart BB.

Other initial points made by the Memo include:

- Different processes and/or equipment differentiate Subpart BB and Subpart CC
- Differences between the subparts in terms of applicability thresholds, operation, inspection, monitoring and repair
- Despite the fact that both subparts contain provisions applicable to pressure relief devices there are differences in monitoring requirements

The remainder of the Memo discusses EPA’s interpretation that Subpart CC:

. . . applies to closure devices located in covers on top of tanks, containers, and surface impoundments (e.g., a spring-loaded pressure relief valve on a tank cover).

The stated rationale for EPA’s position is that the Subpart CC regulations expressly define and apply to “closure devices” in a cover. Equipment that does not satisfy the definition of a “closure device” (e.g., a valve on the side of a tank) is stated to be subject to Subpart BB (as applicable).

The Memo includes an illustrated example of EPA’s interpretation involving a tank with Level 1 controls.

The Memo concludes by stating that it is clarifying that:

. . . Subpart CC applies to closure devices in covers (e.g., springloaded pressure relief valve on a tank cover) because Subpart CC expressly defines and applies to “closure devices” in a cover. Specifically, closure devices associated with fixed-roof Level 1 tanks are subject to Subpart CC based on the requirements of 40 CFR 264.1084(c) and/or 265.1085(c). Similarly, closure devices associated with a fixed-roof, floating roof, or pressure tank for Level 2 tanks are subject to 40 CFR 264.1084(e) through (h) and/or 265.1085(e) through (h). Other equipment (as defined in 40 CFR 264.1031; e.g., a valve on the side of a tank) is subject to Subpart BB requirements, as applicable.

A copy of the Memo can be downloaded [here](#).