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Generator Improvements Rule/Definition of Solid Waste Revision: Penny J. Wilson (Arkansas Department of Environmental Quality) Arkansas Environmental Federal Regulated Waste Seminar Presentation

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Penny J. Wilson undertook a presentation at the Arkansas Environmental Federation Regulated Waste Seminar that addressed two topics related to the Resource Conservation and Recovery Act (“RCRA”):

- Generator Improvements Rule
- Revised Definition of Solid Waste

Ms. Wilson is the Compliance Branch Manager in the Arkansas Department of Environmental Quality’s Office of Land Resources.

Generator Improvements Rule

The Presentation included a detailed history of the Generator Improvements Rule (“Revisions”).

The original promulgation of the requirements for RCRA generators occurred in the 1980’s. The Revisions were proposed on September 25, 2015. The Revisions are stated to have included over 60 changes. Interest in the Revisions is stated to have been high because of the receipt of 230 comments from a variety of organizations of governmental and non-governmental entities.

The final Revisions were published on November 28, 2016, and the intent is stated to be:

- Improve compliance and flexibility;
- Reorganize, consolidate, and explain requirements in greater detail; and
- Clarify and incorporate guidance, notices, and policies.

A challenge by several petitioners (filing a “statement of issues”) is stated to be awaiting a settlement.

The Presentation described a statement of issues and changes promulgated by the Rule. Changes referenced included:

- Generator Categories
- Satellite Accumulation Areas
- 50-foot Waiver Opportunity for Ignitable/Reactive Waste

- Clarification Regarding Small Quantity Generator Accumulation of Hazardous Waste on Drip Pads/Containment Buildings
- Emergency Planning and Preparedness
- Computer-Based Tools for Personnel Training
- Closure
- New Recordkeeping Requirements
- New Reporting Requirements

Revised Definition of Solid Waste

The Presentation noted that the revised definition of solid waste (“Revision”) was published in January 2015 to resolve legal challenges to the 2008 revision. The January 2015 version is stated to be the most recent change.

Ms. Wilson noted that the 2015 rulemaking was challenged by both industry petitioners and environmental petitioners. The basis for both the environmental and industry petitioners’ challenges were described in the Presentation.

As noted, in July 2017 the U.S. Court of Appeals ruled on the Petitions upholding certain aspects of the Revisions and vacating others. Subsequently, on March 6, 2018, the federal appellate court revised some aspects of the 2017 decision.

Factor 4 of the legitimacy criteria is stated to have been vacated (therefore reinstating the criteria from the 2008 rule). Further, the “verified recycler” exclusion in the 2015 rule is stated to be vacated (excepting the emergency preparedness provisions and the expanded containment requirement).

Ms. Wilson notes that the court reinstated the “transfer-based exclusion” from the 2008 rule. This exclusion is stated to be available for spent catalyst that will be reclaimed.

EPA is issuing a Direct Final Rule to address the Court’s decision.

EPA delegated the RCRA program to the Arkansas Department of Environmental Quality many years ago. As a result, Ms. Wilson notes that ADEQ will:

- Initiate rulemaking to adopt the Generator Improvements Rule
- Initiate rulemaking to adopt the Revised Definition of Solid Waste

ADEQ offers training on both of these issues.

[A copy of Ms. Wilson’s slides can be downloaded here.](#)