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What's New at USEPA?



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2018 saw a flurry of activity at the United States Environmental Protection Agency (USEPA). It was a year of many regulatory amendments and policy changes. Those changes that directly affect industrial operations are summarized below.

“Once-In Always-In”

In January 2018, Assistant Administrator Wehrum issued a guidance memorandum withdrawing the 1995 “once-in always-in” policy for classifying major sources of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act.

Under the 1995 policy, even sources that had curtailed HAP emissions entirely remained subject to the regulatory requirements major sources of HAPs must meet, including recordkeeping and reporting for HAP emissions they no longer emit. In the January 2018 guidance memorandum, USEPA explained that the plain language of the statute allows major sources that no longer meet the statutory definition of a “major source” of HAPs to be reclassified at any time and to no

longer be subject to major source requirements.

The regulatory standards to which this policy applies are the National Emission Standards for Hazardous Air Pollutants

(NESHAPs). There are several NESHAPs that may apply to printers and printing related operations, including standards that address HAP emissions from gravure printing presses, chromium electroplating, boilers, generators, paper and other web coating operations, and miscellaneous organic chemical manufacturing from activities such as ink manufacturing. If you have changed processes or chemicals and were formerly subject to a NESHAP, you may now be excluded from the regulatory requirements associated with the NESHAP.

Source Determination

Businesses that operate under the same 2-Digit Standard Industrial Classification (SIC), which are located on one or more contiguous or adjacent properties and operate under the control of the same person (or persons under common control),

may be deemed a “single source” for purposes of air permitting. Printers that operate their business in more than one building may have to treat all operations as one source.

Alone, the operations in each building may be minor sources of air pollution and eligible for a minor source air permit, but when treated in combination, the total potential emission rate could throw them into a higher level of permitting with more stringent requirements. Some states, such as Illinois, may view operations that are as much as a mile away as one source because of interdependent operations.

In April 2018, USEPA issued new guidance that provides some relief from the “single source” determination. The heart of USEPA’s new guidance is to place less reliance on the “support or dependence” aspect of the business relationship between two separate entities, and more reliance on investigating the “power or authority of one entity to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements.”

Waters of the United States

In December 2018, USEPA and the Department of the Army proposed a revised definition for the Waters of the United States (WOTUS). The proposal is a two-step rulemaking process to review and revise the definition of WOTUS, which will essentially serve to reduce the number of types and categories of waterways that are subject to federal oversight and, instead, put these waterways under the management of the states.

Specifically, the first step proposes to rescind the 2015 WOTUS rule and its definition. Additionally, it will recodify the pre-existing rules regarding what waters of the United States would fall under the jurisdiction of the Clean Water Act.

If the change in definition of WOTUS is adopted, the business community could potentially see changes in the applicability and extent of regulatory programs, rules, and regulations that are directly related to the WOTUS such as the Oil Protection Act of 1990, which is the basis for requiring Spill Protection Control and Countermeasure (SPCC) plans.

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New Source Review

USEPA also addressed a longstanding permitting policy under the New Source Review (NSR) program. NSR is a preconstruction permitting program that requires certain large stationary sources of air pollution to obtain permits prior to beginning construction. It applies to both new construction as well as modifications of existing sources.

Prior to this action, a company that initiated different projects years apart could potentially be found in violation of the USEPA's aggregation policy, which may have classified these different projects as one project subject to NSR, when individually they may not have been subject to NSR. Now, aggregation will be defined as projects that are technically or economically related, and not necessarily aggregated because of timing.



Image by Gerd Altmann from Pixabay.

Ann O'Brien is a Project Manager with SCS Engineers with more than 30 years of experience in the printing industry. Ann has worked in the environmental field for much of her career, and her background includes air and water quality permitting, environmental recordkeeping, reporting and monitoring programs, hazardous waste management, employee EHS training, environmental compliance audits, and environmental site assessments and due diligence associated with real estate transactions and corporate acquisitions.

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