



April 2011

Happy Earth Month! This issue includes information on the new boiler rules, applying pesticides to water, a regulatory update, and a special Earth Day green tip. If you have questions or topic suggestions, please reply to this email.

Boiler Rules

On February 21, 2011, the U.S. Environmental Protection Agency (EPA) issued final Clean Air Act (CAA) standards for boilers and certain incinerators in four related rules:

- National Emission Standards for Hazardous Air Pollutants (NESHAP) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler MACT Rule)
- NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers (Area Source Boiler MACT)
- Standards of Performance for New Stationary Sources (NSPS) for Commercial and Industrial Solid Waste Incineration Units (CISWI)
- Resource Conservation Recovery Act: Definition of Solid Waste as it applies to CISWI units

The effective date for the Boiler MACT Rule and the Area Source Boiler MACT is May 20, 2011; the Initial Notifications for both rules are due no later than September 17, 2011. According to EPA, because the final standards significantly differ from the proposals, EPA will reconsider the final standards under a CAA process that allows the agency to seek additional public review and comment. EPA's reconsideration will cover the emissions standards for large and small boilers and for solid waste incinerators; EPA will release additional details on the reconsideration process in the near future.

The types of boilers and incinerators covered by these updated standards include:

- Boilers at large sources of air toxics emissions: includes refineries, chemical plants, and other industrial facilities. These standards will reduce emissions of harmful pollutants including mercury, organic air toxics, and dioxins.
- Boilers located at small sources of air toxics emissions: includes small industrial facilities, universities, hospitals, hotels, and commercial buildings. Due to the small amount of emissions these sources are responsible for, EPA has limited the impact of the final rule making on small entities.
- Solid waste incinerators that burn waste at a commercial or industrial facility, including cement manufacturing facilities.

EPA has also identified which non-hazardous secondary materials are considered solid waste when burned in combustion units. The distinction determines which CAA standard is applied when the material is burned. The non-hazardous secondary materials that can be burned as non-waste fuel include scrap tires managed under established tire collection programs. To determine that materials are non-hazardous secondary materials when burned under today's rule, materials must not have been discarded and must be legitimately used as a fuel.

More information: <http://www.epa.gov/airquality/combustion>

Definition of a Solid Waste

EPA plans to develop a proposed rule asking for comment on potential revisions to the October 2008 Definition of Solid Waste Rule to address concerns raised by the Sierra Club, as well as other environmental organizations. Under a settlement agreement with the Sierra Club that has been filed with the D.C. Circuit Court of Appeals, EPA has committed to a proposed rule on or before June 30, 2011 and to take final action on the proposed rulemaking on or before December 31, 2012. DHEC would start the adoption process once this rule becomes final. Since optional, will require Legislative review/approval.

The new NPDES permit for application of pesticides to water

BACKGROUND

The application of pesticides (including herbicides) is often applied to water to target pests in water (e.g., nuisance vegetation). Sometimes used to curb the spread of mosquitoes, pesticides unavoidably end up in water. While these activities have been ongoing over the years to protect water and public health, there has been controversy about whether the NPDES program applied to these activities. Historically, pesticide regulation has only been addressed through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Clemson is delegated by EPA to implement the FIFRA program in South Carolina.

In an effort to resolve the controversy, EPA issued a new regulation in 2006, which stated specifically that application of pesticides to waters would not need an NPDES permit if (generally) the application was performed in compliance with FIFRA. EPA's regulation was challenged in federal court and EPA lost.

SOUTH CAROLINA

Since DHEC is delegated the federal NPDES program in South Carolina, DHEC developed and issued a general NPDES permit to address the need for entities who would apply pesticides to South Carolina surface waters. This permit does not supplant the requirements under FIFRA and Clemson's pesticide program, but adds a new requirement for those who apply to South Carolina's surface waters. DHEC's permit, issued March 10, 2011, is scheduled to go into effect October 31, 2011 (a date based on a court ruling). However, the permit was appealed so there is some uncertainty in that date. At this point, October 31, 2011 is the date the federal court has mandated NPDES permits for application of pesticides to surface water.

OUTLINE OF PERMIT REQUIREMENTS

Coverage under the general permit is automatic for "small" users, i.e., users that don't exceed certain thresholds. If a threshold would be exceeded, submission of a notice of intent (NOI) is required like with other NPDES General Permits. The permit addresses the owner-operator as well as the for-hire operator.

The permit does not apply to application of pesticides to "treatment works", as defined by the Pollution Control Act and does not apply to stormwater runoff from pesticides applied to the land.

USE PATTERNS THAT FIT THIS PERMIT

If you apply pesticides to water, you need an NPDES permit. To be eligible for coverage under the general permit DHEC issued, you must fit one of the following use patterns (see permit for details).

- # 1: Mosquito/ Other Flying Insect Pest Control
- # 2: Aquatic Weed and Algae Control
- # 3: Aquatic Nuisance Animal Control
- # 4: Forest Pest Control
- # 5: Intrusive Vegetation Control
- # 6: Other Similar Activities (similar to 1-5 above)

DON'T TUNE ME OUT YET

Before you quickly conclude that your activity will not need coverage under this permit, consider that the definition of “waters of the state” includes such things as “ephemeral streams” (natural watercourses that only flow in direct response to rainfall) and isolated wetlands (which can look quite dry in a drought.) People who are not knowledgeable of the extent of “waters” may be applying in waters and not realize it.

MORE INFORMATION

See our Pesticide/NDPES page available directly from the DHEC/Water home page at www.scdhec.gov/water. Here you will find the general permit, guidance and contact information. We will also post information about the overall status of the permit and its effective date relative to the appeal.

Regulatory Update

Bureau of Land and Waste Management

The Regulation R.61-79 RCRA 19 Package was approved by the DHEC Board on March 10, 2011 and now proceeds to Legislature for approval. This package includes: 1) The Academic Laboratories Generator Standards Rule that allows for greater flexibility for colleges to handle hazardous waste and allows for one-time-a-year lab cleanouts that does not count towards their generator status.

2) Removal of National Environmental Performance Track Program - In May 2009, EPA discontinued the program and the allowable flexibility in RCRA and the State can not be less stringent. So, all references to Performance Track and SCEEP will be removed. SCEEP will remain as a recognition program.

R.61-99, Hazardous Waste Management Planning – The DHEC Board approved regulation repeal at the March 10, 2011 meeting and now proceeds to the Legislature for approval. The entire regulation will be removed. Hazardous Waste Planning is also known as demonstration of need for RCRA and was made null and void by a Federal Court case saying that the regulation violated Interstate Commerce.

Green Tip

Earth Day is April 22. How will you be spending the day? You are encouraged to let your employees know how they can do their part to benefit the environment. SC DHEC has information and resources you can use. Go to www.scdhec.gov/earthday or www.scdhec.gov/greenguide for more information.

Additional Newsletters

UST Newsletter

http://www.scdhec.gov/environment/lwm/html/ust_news.htm

Swimming Pool Newsletter - Newsplash

<http://www.scdhec.gov/environment/water/recreation.htm#splash>

Smart Business Recycling Program

http://www.scdhec.gov/environment/lwm/recycle/smart_business/archive.htm

Non-Point Source Newsletter - Turning the Tide

<http://www.dhec.sc.gov/environment/water/npspage.htm#npsnews>

Environmental Laboratory Certification – Update

<http://www.scdhec.gov/environment/envserv/lcupdates.htm>

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