

## Deadline Approaches for DOT Security Plans for Hazardous Materials Shipments

Shippers of the following hazardous materials must, by September 25, 2003, prepare a written security plan that addresses the security risks inherent in the shipping of those materials:

- A highway route-controlled quantity of a Class 7 (radioactive) material;
- More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive);
- More than one L (1.06 qt) per package of a material poisonous by inhalation;
- A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;
- A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class;
- A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73; or
- A quantity of hazardous material that requires placarding.

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The security plan must include an assessment of possible transportation security risks for hazardous materials shipments and appropriate measure to address those risks. At a minimum, the plan must include the following:

- **Personnel security.** Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan. Such confirmation system must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy.
- **Unauthorized access.** Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.
- **En route security.** Measures to address the assessed security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement. (Cont'd on Page 2)

### Security Plans (Cont'd from Page 1)

By December 22, 2003, each hazmat employee of a shipper required to prepare a security plan must be trained concerning that plan and its implementation.

In addition, all shippers of hazardous materials must provide security awareness training for their employees involved in shipping hazardous materials. (See May 2003 issue of the *Environmental Cable* for details). Current employees must be trained at the first scheduled

recurrent training date, but no later than March 24, 2006. New employees must receive training within 90 days of employment. DOT has available a security awareness program that can be downloaded or ordered at no charge in limited quantities from their web site at [http://hazmat.dot.gov/hmt\\_security.htm](http://hazmat.dot.gov/hmt_security.htm). For a copy of the rule or the training CD and related information (limited quantities) use the QUIK-REPLY Form.

### EPA To Adopt Regulations Addressing RMRR Exemption under NSR

EPA recently announced that it plans to publish a final rule establishing criteria for approving equipment replacement projects under the current exemption from nonattainment New Source Review (NSR) and Prevention of Significant Deterioration (PSD) for routine maintenance, repair and replacement (RMRR). Under the rule, the exemption for RMRR would apply to the replacement of any component of a "process unit" with an identical or "functionally equivalent" component provided that the "fixed capital cost" of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit at the time the equipment is replaced. Replacement value must be based either on an estimate of the fixed capital cost of constructing a new unit or on the current appraised value of the process unit (although other alternatives may be used provided the applicant sends a notice to the reviewing authority). To qualify for the new exemption, the project cannot alter the "basic design parameters" of the process unit or cause the unit to exceed any applicable emission limitations or standards. Key elements of the rule are:

- **Identical or functionally equivalent components.** The exemption applies to the replacement of a component of a process unit with the identical or "functionally equivalent" component. The regulation defines "functionally equivalent component" as "a component that serves the same purpose as the replaced component." Examples offered include replacing existing spray paint nozzles with new ones that might atomize the spray

better or have a higher transfer efficiency.

- **Process unit.** Under the regulation, the 20 percent threshold applies to the "process unit" which is defined as "any collection of structures and/or equipment that processes, assembles, applies, blends or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit." The preamble clarifies that where components are shared by two or more process units, the cost of those components must be proportionately allocated based on capacity. The preamble also clarifies that EPA "expects" industrial boilers to be treated as a separate process unit from other unit operations occurring at the facility.
- **Percentage threshold/aggregation.** Identical or functionally equivalent equipment replacements are exempt as RMRR if the value of the replacements do not exceed 20% of the replacement value of the process unit and do not change its basic design parameters.. This percentage value applies on a per activity or aggregation of activities basis. In deciding whether activities must be aggregated, EPA refers to previous guidance on the issue of aggregation, which make clear that "related" activities must be aggregated. It goes on to note that "under [EPA's] current policy of aggregation, two or more replacement activities that occur at the same time are not automatically considered a single activity solely because they happen at the

same time” and cites as an example of possible separate projects a steam turbine rotor replacement project and a boiler tube replacement projecting on the same process unit.

- **Basic design parameters.** A project is eligible for the RMRR exemption only if the project will not alter the “basic design parameters” of the unit. For process units that are not steam electric generating facilities, basic design parameters include the maximum rate of fuel or heat input, maximum rate of material input or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. In addition, the preamble specifies that the manufacturer’s design parameters of a process unit are always acceptable if an owner/operator chooses to rely on them.” The owner/operator may, however, propose alternative basic design parameters. The preamble clarifies that “an equipment replacement that improves a process unit’s efficiency and thereby enables the unit to return to its design parameters can qualify as RMRR even if current actual emissions increase as a result.

The rule contains no specific recordkeeping requirements to demonstrate compliance with the 20 percent threshold. Instead, EPA assumes that records required to be kept under other regulations will provide “more than reasonable assurance of compliance” with the new regulation.

The regulation has not yet been published in the Federal Register. The effective date will be 60 days after its publication. For states, such as New York, that have accepted delegation of the federal PSD program from EPA (rather than adopting their own PSD regulations), EPA intends to adopt a Federal Implementation Plan (FIP) and amend the reference to the PSD program in their SIP to reflect the revised regulation. Assuming these steps are completed, the new RMRR exemption for equipment replacement would take effect in New York 60 days after the date the rule is published in the Federal Register. States with their own PSD/nonattainment NSR regulations have three years from the effective date of the EPA regulations to amend their own rules to conform. For a copy of the final rule, see EPA’s [web site at http://www.epa.gov/nsr/ERP\\_merged\\_8-27bh.pdf](http://www.epa.gov/nsr/ERP_merged_8-27bh.pdf) or use the QUIK-REPLY Form.

## EPA Allows Sale of PCB Contaminated Property

On September 2, the Environmental Protection Agency announced that it will allow the sale of property contaminated with polychlorinated biphenyls for cleanup and redevelopment. Sale of such properties has up to this time been banned under the Toxic Substances Control Act, which prohibits the sale of PCBs in commerce. However, EPA has determined that applying the ban to transfers of PCB-contaminated land acted as a barrier to the cleanup and redevelopment of such sites. There is no additional information on this new policy on EPA’s web site at this time.

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# STATE NEWS

## Commercial Lawn Care Pesticide Regulations

DEC recently adopted regulations implementing various notification requirements for commercial lawn application of pesticides, an activity that includes virtually any application of pesticides to ground, trees or shrubs on public or private outdoor property. The regulations, which will become effective January 1, 2004, implement existing commercial lawn application requirements found in New York Environmental

Conservation Law (ECL) Article 33, Title 10, and the notification requirements of ECL § 33-0905. Among other things, the regulations address: (1) the requirements governing the content and execution of the written contracts between the commercial lawn applicator and customer; (2) the use of visual notification markers to alert the public concerning pesticide application activities; and (3) providing written information on the

pesticides applied to the owner and/or occupants of the property. DEC proposed a version of the regulations in March of last year that was subsequently withdrawn following objections from the pesticide application industry. DEC revised the regulations and repropose them earlier this year.

The regulations apply to any employee involved in pesticide application activities on the property owned, leased or rented by his or her employer. While the written contract is not required in such situations, the posting and written information

requirements do apply. Activities that may be performed by an employee that could meet the definition of commercial lawn application include spraying for bees or wasps. The application of pesticides around the foundation of a building for the purpose of indoor pest control is not considered commercial lawn application.

For a copy of the new regulations, use the QUIK-REPLY Form or go to DEC's website at <http://www.dec.state.ny.us/website/dsh/pesticid/325amend.htm>.

## CALENDAR OF EVENTS

**Sept. 20 - 27** National Estuaries Day Events: New York State Department of Environmental Conservation's Hudson River Estuary Program is sponsoring a series of events from September 20-28. Special events will explore the Hudson River Estuary and the rich ecosystem it creates along its 153-mile length from New York City to Troy. For a free program booklet, call (800) 453-6665 or (845) 334-9574, or e-mail [ramble@highlandflings.com](mailto:ramble@highlandflings.com).

**Sept. 25** 5:00-8:00 PM, Hudson River Environmental Society's Annual Awards Meeting, Hillside Manor, Kingston. Speaker: Ed Radle, "How to interpret the impacts of power plant cooling systems on HR fish and larval populations." Preregistration by 22 Sept. HRES members: \$30; Nonmember: \$45; Students: \$15. Pay \$50 for a membership and the Dinner Meeting. Check HRES web site: <http://www.hres.org> for program, form and directions, or contact: [stephenwilson2@cs.com](mailto:stephenwilson2@cs.com).

**Oct. 3** Capital District Environmental Breakfast Club. Holiday Inn Turf, Wolf Rd. Topic: Stormwater Phase II: A Practical Look at the Implementation Process. Speaker: Dave Graves, NYSDOT \$12 preregistered, \$14 day of event. For reservations email [bpopolizio@youngsommer.com](mailto:bpopolizio@youngsommer.com) or call 518/438-9907 ext. 240.

**Oct. 8** **MVEIE Annual Business Meeting** Radisson Hotel, Utica; 7:30 am. For reservations or more information call 315-793-8050.

# QUIK-REPLY FORM

For more information on the topics in this issue, fax or mail this form to: Vicki Schlierer, Regulatory Affairs Paralegal, Young, Sommer...LLC, Five Palisades Drive, Albany, NY 12205. Fax: (518) 438-9914.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, ST, Zip: \_\_\_\_\_

Phone: (    )        -        Fax: (    )        -        \_\_\_\_\_

Please send the following:

- |   |   |
|---|---|
| <input type="checkbox"/> <u>DOT Security Plans Rule</u>   | <input type="checkbox"/> <u>EPA RMRR Final Rule</u>                             |
| <input type="checkbox"/> <u>DOT Security Awareness Training CD</u><br><u>(Limited quantities)</u> | <input type="checkbox"/> <u>DEC Commercial Pesticide Applicator Regulations</u> |

Reservations for the Capital District Environmental Breakfast Club, Holiday Inn Turf, Wolf Road, Colonie, NY **October 3, 2003**

_____	<u>Registration (includes full breakfast buffet)</u>	<u>\$12.00</u>
_____	<u>Binder update</u>	<u>\$ 3.00</u>

Please make your reservation no later than **September 30, 2003**. Fax your reservation to 518/438-9914; call Betsy Popolizio at 518/438-9907 ext. 240; or email [bpopolizio@youngsommer.com](mailto:bpopolizio@youngsommer.com) Cancellations will be accepted until Sept. 30. No refunds or credits given after that time as we must guarantee the number of attendees. To help us plan, please make a reservation. **The registration fee will be \$14.00 for walk-ins.**