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Resource Conservation Recovery Act: U.S. Environmental Protection Agency Finalizes Hazardous Waste Export- Import Rule Revisions

Arkansas Environmental, Energy, and Water Law Blog

10/31/2016

The United States Environmental Protection Agency ("EPA") issued a final rule on October 28th revising the Resource Conservation Recovery Act ("RCRA") Subtitle C regulations addressing the export and import of hazardous waste from and into the United States.

The rule will be effective in all states on December 31, 2016 in order to comply with Executive Order 13659.

RCRA addresses the generation, transportation, treatment, storage and disposal of hazardous waste.

While the regulations address the management of hazardous waste in the United States, they have also for years applied to the movement of hazardous waste in and out of the United States for recovery or disposal. This international movement is stated to account for about one percent of all United States hazardous waste shipments.

The United States participates in various bilateral waste agreements between countries and in a multi-lateral waste agreement controlling the shipment of hazardous waste for recovery between member countries and the Organization for Economic Cooperation and Development ("OECD").

EPA states it undertook these revisions to:

- Provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between member of the OECD
- Enable electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports)
- Enable electronic validation of consent in the Automated Export System for export shipments to RCRA export consent requirements prior to exits

The EPA Assistant Administrator of Office of Land and Emergency Management states that hazardous waste shipped across multiple countries to be disposed of or recycled can pose a higher risk of mismanagement. He cites abandoned shipments (e.g., for example, shipments sent to unapproved facilities that are not able to manage the waste appropriately) present the biggest danger to people and the environment. Other risk factors cited include:

- Increased number of people who are handling and transferring international shipments

- Entry and exit procedures
- Temporary storage at ports and border crossings
- Varying degrees of environmental controls and worker safety practices

Revisions will require that hazardous waste imports and exports occur under contracts between exporters and management facilities, and with the written approval of the country of import. The revisions will also require the tracking of international hazardous waste shipments from the starting point to end point. Further, a facility undertaking recycling or disposal must complete the process of the shipment within one year of receipt.

The hazardous wastes encompassed by the revisions includes material managed under 40 C.F.R. Part 266 (e.g., spent lead acid batteries) and universal waste managed under 40 C.F.R. Part 273.

EPA cites a prior Office of Inspector General (“OIG”) report as a rationale for at least a portion of the revisions. OIG’s concerns are stated to be addressed by the increase in the tracking of individual import shipments of hazardous waste and mandating EPA’s consent to an import notice submitted by either the foreign exporter or the United States importer.

[A link to the preamble and the final rule can be downloaded here.](#)