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New Proposed Changes to Ignitable Waste Regulations May Expand Definition of Hazardous Waste

Insight — 04/17/2019

On April 2, 2019, the Environmental Protection Agency (EPA) issued a proposed rule intended to modernize the regulations governing ignitable liquids hazardous waste determinations under the Resource Conservation and Recovery Act (RCRA). See *Modernizing Ignitable Liquids Determinations*, 84 Fed. Reg. 12539 (proposed Apr. 2, 2019) (to be codified at 40 CFR pts. 260, 261 and 266). Although it has been packaged as a codification of existing guidance that will not create new requirements or change existing requirements, the rule does propose to narrow one of the ignitability characteristic exclusions, which would thereby expand the definition of ignitable hazardous wastes. Therefore, the proposed rule could have a significant impact on mining companies, wastewater treatment systems, laboratories, and any generators that manage chemicals used for solvent properties. According to EPA, the proposed rule contemplates amendments to “clarify” certain issues related to the ignitability characteristic, including the exclusion for certain ignitable liquids containing alcohol, as well as how to sample wastes containing multiple phases when determining whether a waste exhibits the ignitability characteristic. The current rule excludes low flashpoint aqueous liquids with less than 24 percent alcohol from qualifying as ignitable hazardous waste. The proposed rule removes the undefined term “aqueous” with a 50 percent water by weight criterion, and adds an exception to the exclusion if the alcohol has been used for its solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005. This exclusion for alcohols used for solvent properties may change the classification for commercial products with solvent ingredients, or for process wastewater contaminated with solvent constituents, making these wastes “ignitable” hazardous wastes where previously they would have been excluded as aqueous solutions. Further, the proposed changes will allow for the use of modern equipment in addition to previously required mercury thermometers, as well as updated flashpoint measurement techniques for making ignitability determinations for waste, updating test methods listed in the 1980 and 1981 RCRA regulations. The 60-day comment period on the proposed rule seeking input from waste generators, laboratories, state officials, trade associations, and members of the public runs until June 3, 2019. If you have questions about how the proposed rule may apply to your operations, or any other issues raised by this alert, please feel free to reach out to Holland & Hart's Environmental Compliance Team.

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