

REGULATORY COMPLIANCE

Environmental Protection Agency (EPA) proposes to add waste aerosol cans to the Universal Waste Program

The Environmental Protection Agency (EPA) issued a proposed rulemaking in March 2018 which would amend rules allowing waste aerosol cans and contained product to be handled by generators under reduced regulatory requirements. Currently aerosol wastes which may be considered “ignitable” are regulated as hazardous wastes. EPA believes that the proposed regulatory change will help reduce regulatory burdens on generators and promote the recycling of routinely generated aerosol materials. Many cooperatives are already subject to the universal waste rules in context to various other waste materials such as used oils, regulated lighting and batteries. While RC staff supports EPA’s effort to reduce regulatory burden in waste handling we are currently reviewing this proposed rule for its impact to our members under the existing universal waste program (FR Vol. 83, No. 52, March 16, 2018, P.11654).

Occupational Safety and Health Administration (OSHA) issues an update of its standard for Construction Crane and Derrick Operator Qualification

OSHA issued a notice of proposed rulemaking in May 2018 revising its rule requiring operator qualification for certain types of cranes and derricks used during construction activities. OSHA’s original standard, for the first time, required employers to ensure the competency of operators in the use of this equipment. The final rule is scheduled to become effective in November 2018. The newly issued proposed rule re-establishes minimum competency requirements for operators, streamlines levels of certification, requires continuing operator training and again extends the final deadline for some compliance aspects. RC staff is currently reviewing the proposed rule in context to its revisions and specifically in context to the final rule’s exemption for electric utility work covered under OSHA’s Electric Generation, Transmission and Distribution Standards (1910.269). This exemption allows electric utilities to maintain their current approach to operator training and standards if the work being performed with the equipment is performed in context to normal utility activity. Comments to the revised rule are due by June 20, 2018 (FR Vol. 83, No. 98, May 21, 2018, P. 23534).

US District Court grants a petition to 11 additional States staying the implementation of the 2015 “Waters of the United States” (WOTUS) rule

On June 8, 2018, the US District Court for the Southern District of Georgia granted a petition by 11 states, including Indiana, in issuing a stay to the 2015 WOTUS rule. This brings the total number of states which have been granted a rule stay to 24. This action means that the pre-2015 rule remains in effect within Indiana. US EPA is continuing to work on separate rulemakings to fully rescind the 2015 rule and then shift work to promulgating a new WOTUS rule.

US Fish and Wildlife Service (FWS) issues guidance on the “taking” of protected bird species under the Migratory Bird Treaty Act

In April 2018, the FWS issued written guidance clarifying the action of a “taking” (disturbing, killing, impacting) of birds protected under the Migratory Bird Treaty Act (MBTA). The MBTA covers most native bird species found in the US. Under the newly released guidance, the “taking” of a bird/nest/eggs do not occur unless the **purpose** of the activity is to impact the bird. This stance benefits electric utilities which may impact bird species through the birds contact with electrical lines and structure. The guidance does not impact the “taking” and/or permitting responsibilities under the Bald and Golden Eagle Protection Act or the Endangered Species Act.