



Hazardous Waste: New Corrosivity Test Denied, But the Fight is Not Over

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EPA has tentatively denied a petition to expand the test for the hazardous waste characteristic of corrosivity to cover more wastes. In so doing, however, EPA left the door open to reconsider the decision based on public comment and, by separate regulatory action, to evaluate further whether “irritant wastes” may deserve closer scrutiny for potential regulation.

In 2011, Public Employees for Environmental Responsibility (PEER) petitioned EPA to expand the definition of corrosive hazardous waste by: (i) lowering the caustic pH regulatory value from pH 12.5 to pH 11.5; and (ii) including non-aqueous wastes within the coverage of the corrosivity characteristic. PEER’s petition asserts that “inhalation exposures primarily due to concrete or cement dust... may occur in the course of manufacturing or handling cement and building demolitions,” citing in part exposure to dust from the 2001 World Trade Center (“WTC”) disaster. PEER also claims that other standard-setting bodies have adopted a pH value of 11.5 to determine corrosivity, warranting similar action by EPA. If the petition had been granted, it would have triggered a substantial broadening of the scope of wastes regulated as hazardous due to corrosivity, especially for cement and building demolition-related industries.

Although EPA tentatively rejected PEER’s petition, EPA’s rejection offers some insights into its analysis of petitions for changes to characteristic hazardous waste definitions. First, EPA determines that a pH value of 11.5 actually is not widely used or uniformly established as a corrosivity standard and that adoption of a particular corrosivity standard for a different agency program (or even a different EPA program) does not mean that it is appropriate for hazardous waste characterization in any event. EPA also finds PEER’s reliance on the WTC scenario and exposure to purer forms of cement dust to be misplaced due to the variety of constituents in the WTC dust and a lack of evidence of corrosive-related injuries in the WTC and other cement dust exposure situations. Third, EPA determines that application of a pH-based corrosivity standard to non-aqueous materials is unwarranted due to a lack of both supporting scientific research and a reliable record of injuries caused by non-aqueous corrosives. Indeed, EPA remarks that many of the petition’s claims are “factually incorrect or inaccurate or are otherwise misstatements,” concluding that the petition fails to justify revisions to the corrosivity characteristic.

Nonetheless, EPA “is soliciting public comment and data and other information on the issues raised,” allowing support for the petition to be improved. Just as significant, however, is EPA’s single-sentence musing about whether it “should consider a new hazardous waste characteristic that would identify and regulate irritant wastes,” an issue that EPA says is begged by the petition but that is beyond the scope of EPA’s response to it.

Companies generating alkaline solid wastes (like cement and demolition-related firms) may wish to file comments on the denied petition to ensure that the administrative record reflects their perspective. They may also want to address EPA's hint at potential consideration of "irritant wastes" as a new hazardous waste characteristic. Comments are due by June 10, 2016.

69 Fed. Reg. 21295 (April 11, 2016).

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