

PRACTICAL SOLUTIONS

HAZARD EVALUATIONS, INC.
QUARTERLY NEWSLETTER

SUMMER 2017

Radioactive Slag: An Issue for WNY Properties

When raw metal ore is exposed to high temperatures, impurities can be separated from molten metal and removed. The resulting material, generally known as “slag”, is a common byproduct of smelters and foundries. By this processing of ores, naturally-occurring radioactive materials can become concentrated, causing the slag to exhibit elevated radioactivity levels. Despite this, slag was historically used (and often still used today) as an inexpensive and readily-available fill in the construction of road surfaces, driveways, and parking lots. Use in these applications can result in an environmental hazard and cause complications for property development. The primary complication occurs when the property owner is unaware of where the materials were originally sourced. In Niagara County, for example, some tested residential and commercial locations had readings up to 650 times more radioactive than nearby non-contaminated soils.

The U.S. Nuclear Regulatory Commission (USNRC) defines a “hot spot” as a “region in a radiation or contamination area where the level of radiation/contamination is significantly greater than in neighboring regions in the area.” The U.S. Department of Energy and NYS Department of Health (NYSDOH) identified 100 hot spots in Niagara County and Grand Island in 1984-1985, but only about one-third of those have been cleaned up after determining that those specific sites had radioactive waste linked to the infamous Manhattan Project. The remaining two-thirds were believed by the federal government to have been linked to local, commercial metallurgical companies operating in Buffalo, Tonawanda and Niagara Falls from the 1890s through the 1960s. According to the USEPA, these 60 sites do not qualify as Superfund sites and are not scheduled for cleanups or any further assessment.

Courtesy of: www.nationalslag.org

Generally, naturally-occurring substances, including radioactivity resulting from radon gas, would not be considered a “release”, but radioactivity as a result of radioactive waste material that has been disposed or spilled may be considered a release and a potential concern, therefore potentially affecting financial transactions associated with the property. ASTM E1527-13: Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process, the standard used when conducting Environmental Site Assessments (ESAs) for commercial transactions, includes a section regarding radioactivity and the standard methods for documenting the location and source of radioactive materials used, stored or disposed of on a given site. With the prevalence of slag materials in WNY and the potential for residual radioactivity, ESAs should include a thorough review of all available information pertaining to historical radioactive contamination.

Hazardous Waste Export-Import Revisions Now Effective

Revised RCRA hazardous waste (HW) export-import regulations were finalized by the United States Environmental Protection Agency (USEPA) on October 28, 2016 and published in the Federal Register on November 28, 2016. The purpose of the revision was to provide greater protection to human health and the environment by providing for increased transparency, data-sharing, and more efficient compliance monitoring for international shipments.

Major changes resulting from the RCRA hazardous waste export-import revisions include:

- Improved export and import shipment tracking (since all exporters are required to obtain an EPA ID Number).
- Establishment of a single, consolidated and streamlined set of requirements applying to all HW imports and exports, which requires:
 - ⇒ An established written contract between each HW exporter and foreign-receiving facility;
 - ⇒ Submission of notification to USEPA at least 60 days before each shipment by completing and submitting a Notice of Intent to Export; and
 - ⇒ USEPA to issue an Acknowledgement of Consent (AOC) indicating the notification has been accepted.
- Mandatory Electronic Reporting requirements include requiring:
 - ⇒ Foreign facilities to send a copy of shipment documentation through the Waste Import Export Tracking System or “WIETS” program; and
 - ⇒ Submission of annual reports by HW exporting facilities

According to the USEPA, these revisions strengthen tracking of and reporting on individual export and import shipments. These changes became effective in all states on December 31, 2016. Exporters operating in compliance with an AOC letter issued prior to the effective deadline remain subject to the export requirements in effect at the time that the AOC letter was issued by USEPA. HEI recommends reviewing the HW disposal destination facilities listed on each manifest to determine whether your facility may be subject to these changes.

Important
Compliance
Dates &
Deadlines for
2017:Quarter 2
Stormwater
DMR
July 28Semi-Annual Air
Compliance
Report
July 30Quarter 3
Stormwater
DMR
October 28Cooling Tower
Equipment
Initial Annual
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Clarification: Hazardous Waste Fees & Taxes in NYS

As many Large Quantity Generators (LQGs) are aware, generation of hazardous waste (HW) can result in substantial annual fees required by New York State Department of Environmental Conservation (NYSDEC) regulation. Specifically, the fees are based on a charge of \$130 per ton of HW generated within a given calendar year. Additionally, a separate charge for hazardous wastewater generated with various not-to-exceed amounts may apply. These fees are due by the date printed on the invoice received from NYSDC and the funds are retained in a State HW remedial fund. However, generators should be aware that separate from the annual HW fees, HW "Special Assessments" or taxes on HW generation apply under a separate regulatory mandate.



Courtesy of: apps.carleton.edu

While annual HW fees are paid to NYSDEC, HW Special Assessment taxes are paid to the New York State Department of Taxation and Finance (NYSDTF) with submission of a completed NYS Tax Form TP-550: "Quarterly Return for Special Assessments on Hazardous Waste Generated in New York State." The form is completed on a quarterly basis and is due by the 20th of the month following the end of the quarter (e.g., Q1 includes January-March annually, so special assessment taxes, and the completed TP-550 form, are due to NYSDTF for Q1 by April 20th).

There is no threshold to determine whether a facility is required to submit a TP-550 and pay special assessment taxes. If you are a generator of hazardous waste, your facility must make a determination each quarter as to whether or not taxes are owed based on the volume of waste generated during the previous quarter. Total taxes due are based on the amount of waste generated and the specific HW management methods as noted below:

- \$27 per ton hazardous waste disposed of in a landfill or designated for landfill disposal;
- \$16 per ton hazardous waste treated or disposed of except by landfill or incineration or designated for such treatment or disposal;
- \$9 per ton hazardous waste incinerated off-site or designated for incineration;
- \$2 per ton hazardous waste incinerated on the site of generation;
- No special assessment tax for generation of Universal Wastes; and
- No special assessment tax for generation of HW treated on-site.

Also, if the total assessment is determined to be below \$27, the tax is not required to be paid. Additionally, there is the potential a facility may be required to complete back-filing of HW Special Assessment Taxes, and late filings can potentially result in additional interest fees and penalties, depending on how late the filing is received by NYSDTF. Determinations can be made by reviewing the facility's HW manifests for the quarter in question and using the TP-550 form and the accompanying instructions.

OSHA Updates Inspection Initiative for PSM

OSHA recently announced an updated National Emphasis Program (NEP) for facilities covered by OSHA's Process Safety Management (PSM) regulation, 29 CFR 1910.119. The initiative is described in OSHA Directive CPL 03-00-121, "PSM Covered Chemical Facilities: National Emphasis Program". The Directive addresses, among other items, how OSHA will target PSM facilities and how field Compliance Officers should conduct their inspections.

According to the Directive, OSHA is using four sources for targeting PSM facilities: 1) EPA RMP submittals for Programs 1, 2, and 3 facilities; 2) NAICS Codes; 3) OSHA's internal computer system to identify establishments with prior PSM citations issued between January 1, 2000 and September 30, 2015; and 4) OSHA Regional/Area Office knowledge of local PSM facilities.

Each of the identified PSM facilities will be grouped into one of four categories: Category 1: facilities with NAICS Codes likely to have ammonia used for refrigeration as the only High Hazard Chemical (HHC); Category 2: Petroleum Refineries; Category 3: Chemical Manufacturing; and Category 4: facilities that are likely covered by the PSM regulation but are not include in Category 1, 2, or 3. OSHA Offices will also add any PSM facility that is not on the national list, but is known by the Regional Office and/or the Area Office to operate in their jurisdiction, and likely to be covered by the PSM regulation.

The Directive also states that approximately 25% of the total programmed inspections will be in Category 1 facilities; 45% in Category 3 facilities, and 30% in Category 4 facilities. No figures were mentioned for the percentage of inspections in Category 2 facilities.

In addition to the programmed inspections, the Directive also discusses the steps that will be taken in the event an Area Office receives a complaint at a PSM facility. If a complaint or referral is related to a PSM-covered process and involves an application of the PSM regulation, the complaint or referral item(s) will be evaluated and an inspection conducted according to OSHA's Field Operations Manual and the PSM Directive. If an inspection is initiated due to a complaint or referral related to a contractor employer working in a PSM unit, inspections of both the contractor and host employer will be conducted. If the complaint or referral does not involve an application of the PSM regulation (for example, there is a complaint about fall protection hazards in a PSM covered process), the inspection will normally be limited to the complaint and/or referral item(s). However, if the facility has not already been inspected according to the Directive parameters, a concurrent inspection using this NEP may be conducted at the Area Director's discretion. The Directive's effective date was January 17, 2017.

Spotlight On:

HEI SERVICES

HEI specializes in a wide range of compliance and support activities, including Health & Safety, Due Diligence, Air Permitting, Chemical reporting; among many other reporting and compliance aspects for commercial and manufacturing facilities.

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