



THE HAZMAT NEWS NETWORK



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OL' MAN WINTER IS TIRED! At least down in the lower 48...sorry JH, just a few more months of snow shoveling. Hey LG, looks like ol' man winter pushed you up north again. Hi everyone. Welcome to the March 07 newsletter. We hope you find this free information useful. Pass it on to others you think will benefit.

DOCKET ACTION HAS BEEN REAL SLOW...

to the point of nothing new to report. Please note that we do not address Special Permit (formerly Exemptions) actions.

GET SIGNED UP NOW FOR THE FIRST CLASS! We are conducting our DOT hazardous materials, hazardous waste and radioactive materials packaging and transport workshops during the week of May 7-11 in Richland, WA. You can take the classes separately or as one big block. Although this is offered for initial training it is also excellent as retraining or as a stepping stone to one of our advanced courses. For enrollment information and a course syllabus visit our website at www.regulatoryresources.net. Remember, these open-enrollment courses are on a first-come, first-serve basis and have limited attendance. Don't delay in getting your registration in. Be sure to make your hotel arrangements early to ensure a room is available.

BOY, YOU'VE GOT TO HEAR THIS ONE. Way back in December 2000, I submitted to EPA Office of Solid Waste a letter requesting guidance concerning the hazardous waste characteristic criteria, specifically for flammable gases, oxidizers and explosives. After seven years and three formal submissions (not to mention numerous calls), I received an answer...but only after EPA published an 'immediate' final rule to change their regs. What a bunch of hogwash! Let me give you a bit of background. Back when EPA ran the Hotline, I (i.e., the regulated community) was informed that D001 waste characterization for flammable gases and oxidizers were still subject to the old, pre-1991 DOT 49 CFR criteria (before the famous HM-181 rulemaking). When you looked up the criteria for these characteristics you were referenced to a DOT 49 CFR cite that, after 1990, no longer existed. This means that you'd have to have the old DOT regs in order to comply. But explosives, as D003, were different. Even though the explosive criteria were referenced to the old DOT regs as well, the Office of Solid Waste said in a February 24, 1995 correspondence (9443.1995(01)) that the criteria didn't apply: "The first question raises concern with the reference at 40 CFR 261.23(a)(8) to certain [DOT] regulations concerning explosive classifications, that are cited as criteria for determining the characteristic of reactivity. The DOT regulations cited at 261.23(a)(8) have recently been changed and expanded to conform with Department of Defense hazard classes,

therefore, presenting difficulties in implementing the Federal regulatory definition of reactivity under RCRA. Until such time that 261.23(a)(8) is updated, those referenced DOT regulations can not be used for determining reactivity. Reactivity determines should be made using the remaining criteria at 261.23(a)(1)-(7)." [emphasis mine]. Holy Moly! They said it...I didn't! Now I just had to write a letter. First, how is EPA providing to all the regulated community the old DOT criteria for flammable gas and oxidizers? And secondly, how does one revise codified regulations by informal letter? I've posted on the website (with this newsletter) my original submission letter and EPA's response. Note that in EPA's response they make it sound as if I'm the one who said that the explosive criteria no longer applies to RCRA waste designations. But it gets better! EPA didn't have the intestinal fortitude to provide any type of a response until after they published a correction docket back on July 14, 2006 (link to docket also provided on our website). Carefully read the changes made to 261.21 and then read our letter to EPA. Hmm. But wait, there's more. EPA finally answered the letter, based on their timely docket (ha), but it only raises more problems. You see, it appears they did not confer with anyone knowledgeable about the DOT regs before they published the "immediate final rule". Here's what's still unanswered. →What is the defining criteria to test a material to see if it is a DOT oxidizer based on the old criteria? They provide a 'definition', but do not provide any test criteria. Furthermore, oxidizers were classified by DOT based on analogy to existing entries in the Hazardous Materials Table (49 CFR 172.101)...the one back in 1990! Did EPA republish this table? What are generators to do? →Where did organic peroxides come from? The EPA did a big no-no here by bringing organic peroxides into the waste characterization criteria without opportunity to comment. Organic peroxides were separated out from oxidizers by DOT in the final rule, HM-112, published April 15, 1976. The definition for oxidizer was located in the then 49 CFR 173.151; organic peroxides were separated and located in 173.151a. EPA, in their big May 19, 1980 final rule, adopted the DOT "oxidizer" criteria in 173.151 for D001...no mention is ever made of the addition of organic peroxides to D001. And EPA even says there's no need for any proposed rulemaking action since there are no changes to the existing regulations. I beg to differ!! →EPA states 261.23(a)(8) is still valid, therefore, waste generators must use the old DOT Class A, B and C explosive criteria. This means using the September 1982 TB 700-2 for classification. And what about the changes to the approved explosive testers? Is there something wrong with this picture? →Lastly, after EPA explains how I was wrong to exclude 261.23(a)(8) criteria for explosives (ha again), they say they are preparing a new rulemaking which will update this criteria by adopting the DOT 'comparison' table in 49 CFR 173.53. This table is not a "classification of explosives" table. Good grief!! It looks as if I get to write another letter. Don't hold your breath for a reply.