



CD ENVIRONMENTAL ENGINEERING LLC

Regulatory focus

1st Qtr | 2020

ADDRESSING THE NEEDS OF THE REGULATED
COMMUNITY FOR ENVIRONMENTAL COMPLIANCE

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Helping you achieve
your environmental
compliance goals.



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New Air Regulations

EPA updated AP-42 Chapter 7: Liquid Storage Tanks

The EPA has recently updated AP-42 Chapter 7: Liquid Storage Tanks. The final version was published on EPA's Air Emissions Factors and Quantification webpage at <https://www.epa.gov/air-emissions-factors-and-quantification>. A redlined version of the changes can be reviewed here: [redline](#)

Applications using AP-42 factors must use the updated emission factors for all new applications beginning December 16, 2019.

EPA Reclassified HGB and DFW Nonattainment Areas

The EPA has reclassified Houston-Galveston-Brazoria (HGB) and Dallas-Fort Worth (DFW) nonattainment areas to serious nonattainment for the 2008 eight-hour ozone National Ambient Air Quality Standards (NAAQS) effective September 23, 2019. The Title V major source thresholds for nitrogen oxides (NOx) and volatile organic compounds (VOC) are now 50 tons per year (tpy). 30 Texas Administrative Code Section 122.130(b)(2) specifies that if a site becomes subject to the Title V programs as the result of an action by the executive director or EPA, an initial Federal Operating Permit (FOP) application must be submitted no later than 12 months after that action. Therefore, owners/operators would have to submit their initial FOP application by September 23, 2020.

Amendments to the Expedited Permitting Program Rule

Senate Bill (SB) 698, 86th Texas Legislature, 2019, amended the Texas Health and Safety Code Texas Clean Air Act to allow the TCEQ to use full-time equivalent employees to process expedited air permits and fully fund the full-time equivalent employees with the surcharge collected for an expedited application. The rulemaking would amend §101.601 by adding full-time equivalent employees to the list of expenses allowed to be reimbursed by the surcharge collected for processing an expedited air permitting application.

EPA Proposes Approval to Texas SIP

The EPA is proposing to approve revisions to the Texas (TX) State Implementation Plan (SIP) submitted on February 22, 2019 that revise the State's New Source Review (NSR) permitting rules contained in Title 30 of the Texas Administrative Code (TAC) Chapter 116. The EPA is also addressing portions of an April 16, 2014, SIP submittal pertaining to provisions regarding Greenhouse Gas (GHG) emissions that were invalidated by the United States Supreme Court. The February 22, 2019, SIP submittal appropriately revises the April 16, 2014, SIP provisions that were impacted by the Court's ruling. For more information, contact Ms. Elizabeth Layton at 214-665-2136 or layton.elizabeth@epa.gov.



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VOC RACT: HGB & DFW 2008 8-Hr O₃ Nonattainment Area Reclassifications

Since the DFW and HGB areas have been reclassified by the EPA, the state will be required to submit a state implementation plan (SIP) revision to fulfill the volatile organic compounds (VOC) reasonably available control technology (RACT) requirements mandated by Clean Air Act (CAA). The specifies an attainment date of July 20, 2021 for serious nonattainment areas.

Depending on the classification of an area designated nonattainment for an ozone NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding. For this reason, the major source emission threshold remains at the level required for serious nonattainment areas, which is the potential to emit (PTE) of 50 tons per year (tpy) of VOC. Wise County was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area; therefore, the major source threshold for Wise County is based on a classification of moderate under the 2008

standard, which is the PTE of 100 tpy of VOC. With the reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is the PTE of 50 tpy of VOC emissions. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County. Although the HGB area was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, staff has determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes proposed in this rulemaking to implement RACT in the HGB area.

The proposed rulemaking would also include technical revisions intended to correct inadvertent errors in Chapter 115, Subchapter E, Division 2, Surface Coating Processes, made during a previous Chapter 115 VOC RACT rulemaking, to ensure consistency with the agency's intent. The proposed rulemaking would revise two tables in §115.421 to correct inadvertent errors made to the emission limits applicable to the surface coating of miscellaneous metal parts and products and the vehicle wipe-down solutions category. Non-substantive revisions would also be proposed as part of this rulemaking to remove obsolete language.



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NOX RACT: HGB & DFW 2008 8-Hr O₃ Nonattainment Area Reclassifications

Since the DFW and HGB areas have been reclassified by the EPA, the state will be required to submit a state implementation plan (SIP) revision to fulfill the nitrogen oxides (NOX) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and §182(f). The EPA specifies an attainment date of July 20, 2021 for serious nonattainment areas. Although the HGB area was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, staff determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes proposed in this rulemaking to implement RACT in the HGB area.

The major source threshold for Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, which made up the DFW serious nonattainment area under the previous 1997 eight-hour ozone NAAQS of 0.08 ppm, is currently 50 tons per year (tpy). Wise County was first included in the DFW ozone nonattainment area for the 2008 eight-hour ozone NAAQS; therefore, the major source threshold for Wise County is based on a classification of moderate under the 2008 eight-hour ozone NAAQS, which was 100 tpy of NOX. With reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is 50 tpy of NOX. This proposed rulemaking would implement

RACT in Wise County to reflect this change in the major source threshold for Wise County.

NESHAP RTR: Generic MACT Standards for Ethylene Production

The EPA is proposing amendments to the NESHAP: Generic Maximum Achievable Control Technology Standards. The source category addressed in this action is Ethylene Production. The EPA is proposing decisions concerning the residual risk and technology review (RTR), including proposing amendments pursuant to technology review for storage vessels and heat exchange systems. The EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM), including removing general exemptions for periods of SSM, adding work practice standards for periods of SSM where appropriate, and clarifying regulatory provisions for certain vent control bypasses. Lastly the EPA is proposing to add monitoring and operational requirements for flares; and add provisions for electronic reporting of performance test results and reports and Notification of Compliance Status (NOCS) reports. The EPA estimates that these proposed amendments will reduce hazardous air pollutants (HAP) emissions from this source category by 62 tons per year (tpy). For more information, contact Andrew Bouchard at (919) 541-or bouchard.andrew@epa.gov.



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NESHAP RTR: Misc. Organic Chemical Manufacturing

The EPA is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Miscellaneous Organic Chemical Manufacturing source category. The EPA is proposing decisions concerning the residual risk and technology review (RTR), including proposing amendments pursuant to the technology review for equipment leaks and heat exchange systems, and also proposing amendments pursuant to the risk review to specifically address ethylene oxide emissions from storage tanks, process vents, and equipment leaks. The EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM), including removing general exemptions for periods of SSM, adding work practice standards for periods of SSM where appropriate, and clarifying regulatory provisions for certain vent control bypasses. Lastly, the EPA is proposing to add monitoring and operational requirements for flares that control ethylene oxide emissions and flares used to control emissions from processes that produce olefins and polyolefins; and add provisions for electronic reporting of performance test results and reports, performance evaluation reports, and compliance reports. The EPA estimates that, if finalized, these proposed amendments (not including the potential excess emission reductions from flares) would reduce hazardous air pollutants (HAP) emissions from this source category by 116 tons per year (tpy) and would reduce ethylene oxide emissions from this source category by approximately 10 tpy. For more information, contact Ms. Tegan Lavoie at (919) 541-5110 or lavoie.tegan@epa.gov.

NESHAP RTR: Surface Coating

The EPA is proposing amendments to address the results of the residual risk and technology reviews (RTR) that the EPA is required to conduct in accordance with the CAA with regard to the NESHAP for the Surface Coating of Automobiles and Light-Duty Trucks (ALDT), the NESHAP for the Surface Coating of Miscellaneous Metal Parts and Products (MMPP), and the NESHAP for the Surface Coating of Plastic Parts and Products (PPP). The EPA is proposing to find the risks due to emissions of air toxics from these source categories under the current standards are acceptable and the standards provide an ample margin of safety to protect public health. The EPA is proposing no revisions to the numerical emission limits based on these analyses. The EPA is proposing to amend provisions addressing emissions during periods of startup, shutdown, and malfunction (SSM); to amend provisions regarding electronic reporting of performance test results; to amend provisions regarding monitoring requirements; and to make miscellaneous clarifying and technical corrections. This notice also proposes technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture. For more information, contact Ms. Kim Teal at (919) 541-or teal.kim@epa.gov



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NESHAP RTR: Organic Liquids Distribution (Non-Gasoline)

The EPA is proposing amendments to the NESHAP for the Organic Liquids Distribution (Non-Gasoline) (OLD) source category. The EPA is proposing amendments to the storage tank and equipment leak requirements as a result of the residual risk and technology review (RTR). The EPA is also proposing amendments to allow terminals the option to implement a fence-line monitoring program in lieu of the enhancements to the storage tank and equipment leak requirements; correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); add requirements for electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and Notification of Compliance Status (NOCS) reports; add operational requirements for flares; and make other minor technical improvements. The EPA estimates that these proposed amendments would reduce emissions of hazardous air pollutants (HAP) from this source category by 386 tons per year (tpy), which represents an approximate 16-percent reduction of HAP emissions from the source category. For more information, contact Mr. Art Diem at (919) 541-1185 or Diem.Art@epa.gov.

NESHAP: Ethylene Oxide Commercial Sterilization and Fumigation Operations

As advance notice of proposed rulemaking (ANPRM), the EPA is soliciting information that will aid in potential future revisions to the Ethylene Oxide Emission Standards for Sterilization Facilities. The EPA is soliciting information and requesting comment on potential control measures for reducing ethylene oxide (EtO) emissions from commercial sterilization facilities. These control measures include controls for fugitive emissions of EtO, safety measures for the chamber exhaust vents (CEVs), process equipment improvements, and advances in add-on control technologies for point sources. In addition, the EPA is considering, and requesting comment on, how best to assess potential impacts on small businesses. The EPA is also taking comment on the available EtO usage data for individual facilities and on additional data contained in the modeling file that will be used to evaluate the impact of emissions from commercial EtO sterilizers. Comments must be received on or before February 10, 2020. Comments can be made via *Email*: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2019-0178 in the subject line of the message. or for questions about this action, contact Mr. Jonathan Witt, at (919) 541-5645 or witt.jon@epa.gov



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EPA Clarifies “Adjacent” for NSR and Title V

The EPA understands that among both the regulated community and permitting authorities there continues to be uncertainty regarding the meaning of the term "adjacent," as that term is used in the relevant definitions in EPA's NSR and title V regulations. This uncertainty results in part from court decisions and from case-specific letters from EPA over the past many years. To promote clarity for regulated entities and permitting authorities, EPA is providing its interpretation of the term "adjacent," as used in this context in the NSR and title V regulations.

The EPA will consider properties that do not share a common boundary or border, or are otherwise not physically touching each other, to be "adjacent" only if the properties are nevertheless nearby, side-by-side, or neighboring (with allowance being made for some limited separation by, for example, a right of way). This is inherently a case-specific inquiry where determining the appropriate distance at which two properties are proximate enough to reasonably be considered "adjacent" may vary depending on the nature of the industry involved. Therefore, EPA is not here establishing or recommending a "bright line," or specifying a fixed distance, within which two or more properties will be deemed (or presumed) by EPA to be in close enough physical proximity to be considered "adjacent." In each case, this determination should ultimately approximate the "common sense notion of a plant." Moreover, importantly, for those properties not in physical proximity to each other, EPA will not invoke the existence of some functional interrelationship to establish "adjacency."

This does not amend the definition of "adjacent" in EPA regulations and does not create or change any legal requirements applicable to EPA, state, local, or tribal permitting authorities, permit applicants, or the public. The revised determination of "adjacent" does not itself determine whether any specific set of activities are located on contiguous or adjacent properties or should be treated as a single stationary source. Source determinations are made by permitting authorities on a case-by-case basis after consideration of the relevant administrative record. EPA-approved state, local, and tribal permitting authorities are not required to apply this interpretation and retain the discretion to determine when pollutant-emitting activities are located on contiguous or adjacent properties. Further details can be found in the TCEQ memo: https://www.tceq.texas.gov/assets/public/permitting/air/Announcements/epa_memo_on_adjacent_sources.pdf

Oklahoma General SIP and NSR Permitting Requirements

Pursuant to the CAA, the EPA is proposing to approve identified portions of revisions to the SIP for Oklahoma. This action addresses the revisions submitted to the Oklahoma SIP pertaining to incorporation by reference of Federal requirements, updates to the general SIP provisions and New Source Review (NSR) permit programs to address public notice and modeling requirements, including certain statutory provisions. For more information, contact Adina Wiley at 214-665-2115 or wiley.adina@epa.gov.



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Control of Air Pollution by Permits for New Construction or Modification

A revised Texas statute allows an applicant for a permit amendment to begin construction on the project after the executive director has issued a draft permit including the permit amendment. Traditionally, an applicant would not be able to commence construction until the final permit amendment has been issued. The statute does not authorize any construction which is prohibited by federal law, and the construction is done at the applicant's own risk. Rulemaking is necessary to make commission air permitting rules.

Proposed modifications to §116.118 would allow an applicant for a permit amendment to begin construction once the draft permit is issued, as provided for under THSC, §382.004. Proposed modifications to §116.118 would also include various conditions and limitations from the statute, such as a prohibition on pre-permit construction for certain concrete batch plants; rule language to reflect the statutory requirement that the construction is at the applicant's own risk; and rule language to reflect the statutory requirement that the commission shall evaluate the permit application without considering construction initiated under this rule.

THSC, §382.004 specifies that pre-permit construction is only allowed "to the extent permissible under federal law," and certain restrictions in proposed §116.118 relate to permit actions which, under federal law, are not eligible for pre-permit construction. Specifically, the proposed rules

exclude projects which trigger federal Prevention of Significant Deterioration permitting, Nonattainment Review permitting, and case-by-case Maximum Achievable Control Technology determinations. These proposed conditions are included for consistency with federal law and to ensure the rules meet EPA criteria for approvability as a state implementation plan (SIP) revision.

Definition of "Waters of the United States"- Recodification of Pre-Existing Rules

The EPA and the Department of the Army ("the agencies") are publishing a final rule to repeal the 2015 Clean Water Rule: Definition of "Waters of the United States" ("2015 Rule"), which amended portions of the Code of Federal Regulations (CFR), and to restore the regulatory text that existed prior to the 2015 Rule. The agencies will implement the pre-2015 Rule regulations informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice.

The agencies are repealing the 2015 Rule for four primary reasons. First, the agencies conclude that the 2015 Rule did not implement the legal limits on the scope of the agencies' authority under the Clean Water Act (CWA) as intended by Congress and reflected in Supreme Court cases, including Justice Kennedy's articulation of the significant nexus test in *Rapanos*. Second, the agencies conclude that in promulgating the 2015 Rule the agencies failed to adequately consider and accord due weight to the policy of the Congress in CWA section 101(b) to "recognize,



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preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution” and “to plan the development and use of land and water resources.” 33 U.S.C. 1251(b). Third, the agencies repeal the 2015 Rule to avoid interpretations of the CWA that push the envelope of their constitutional and statutory authority absent a clear statement from Congress authorizing the encroachment of federal jurisdiction over traditional State land-use planning authority. Lastly, the agencies conclude that the 2015 Rule's distance-based limitations suffered from certain procedural errors and a lack of adequate record support. The agencies find that these reasons, collectively and individually, warrant repealing the 2015 Rule.

With this final rule, the regulations defining the scope of federal CWA jurisdiction will be those portions of the CFR as they existed before the amendments promulgated in the 2015 Rule. This rule is effective on December 23, 2019. For more information, contact Michael McDavit at (202) 566-2428 or CWAwotus@epa.gov.



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New Environmental Compliance/ Waste/Wastewater Regulations

Accidental Release Prevention Requirements: RMP Under the CAA

The EPA is revising regulations that are designed to reduce the risk of accidental releases of hazardous chemicals. These regulations are part of the EPA's Risk Management Program (RMP), which the Agency established under authority in the Clean Air Act and recently amended on January 13, 2017. After a process of reconsidering several parts of the 2017 rule, EPA has concluded that a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities that is generally performing well in preventing accidental releases. For this and other reasons, EPA is rescinding recent amendments to these regulations that the EPA no longer consider reasonable or practicable relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. EPA is also modifying regulations relating to local emergency coordination, emergency response exercises, and public meetings. In addition, the Agency is changing compliance dates for some of these provisions. This final rule is effective on December 19, 2019. For more information, contact James Belke at (202) 564-8023 or belke.jim@epa.gov.

Significant New Use Rules on Certain Chemical Substances

The EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 29 chemical substances which are the subject of 28 premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to section 5(e) of TSCA. This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 29 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination. This rule is effective on December 16, 2019. Potentially affected entities may include:

Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

For more information, contact Kenneth Moss at (202) 564-9232 or moss.kenneth@epa.gov.



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RCRA Authorization for Parts of Federal Rule Clusters XXIV, XXV, and XXVII

In order for the state of Texas to be consistent with certain federal solid and hazardous waste requirements and with the Resource Conservation and Recovery Act (RCRA), the TCEQ periodically incorporates specific EPA rule changes into state rules.

In addition to federal rule changes, this rulemaking includes the implementation of House Bill (HB) 1953 from the 86th Texas Legislature, 2019, updates to cross-references and various stylistic, non-substantive changes, such as, correcting typographical errors. Furthermore, the proposed repeal of 30 Texas Administrative Code (TAC) §305.149, Time Limitation for Construction of Commercial Hazardous Waste Management Units, is due to the Quadrennial Review of Chapter 305.

The amendments, programmatic updates, and corrections within state rules includes the following:

- Rule changes in Checklist 234 include the authorization status of the state program that was in place prior to authorization of the state comparable fuels and gasification rules is reinstated with regard to these rules. This checklist is not optional.
- Rule changes in Checklist 235 includes a list of wastes generated primarily from processes that support the combustion of coal or other fossil fuels

that when co-disposed with coal combustion residuals are not subject to hazardous waste regulations. This action codifies long-standing EPA guidance and reflects Congressional intent. This checklist is optional.

- Rule changes in Checklist 236 amend existing regulations regarding the export and import of hazardous wastes from and into the United States. To provide greater protection to human health and the environment, the EPA is revising existing export and import related requirements to be more consistent with shipping requirements of the Organization for Economic Cooperation and Development; enabling electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and enabling electronic validation of consent for export shipments subject to RCRA export consent requirements prior to exit. This checklist is not optional.
- Rule changes in Checklist 240 facilitate a more expedited removal of defective or recalled airbag inflators from vehicles by dealerships, salvage yards, and other locations for safe and environmentally sound disposal by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met. This checklist is optional.



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TEIR II Online Help

Due to the high number of calls and emails the TCEQ expects to receive, the Tier II program has released an online Help Form that will act as the most expeditious way to receive assistance with your Tier II Reports. This form can be found on the [Tier II website](#), or follow this [Tier II Help Form](#) link to fill out your information and to provide information on your question. Received Help Forms will be answered in the order they were received and will take precedence over received emails or phone calls. Submitted forms should receive a confirmation email containing information on the expected wait time on a response. 2019 Annual Reports will be due by March 1st, 2020..The Help form can be found here: [Help Form](#).

Upcoming Compliance Reminders

Jan

| | |
|----|---|
| 1 | ❖ Executive Summary of Five-Year Pollution Prevention Plan, every fifth year. |
| 10 | ❖ Groundwater or Purchased Water Systems: Disinfectant Level Quarterly Operating Report (DLQOR) |
| 20 | ❖ Wastewater Discharge: Quarterly biomonitoring Discharge Monitoring Reports (DMR) and tables |
| 25 | ❖ Industrial and hazardous waste: annual summary report (paper filers). |
| 31 | ❖ Computer Manufacturers, TV Manufacturers and TV Recyclers: annual recycling report |

Feb

| | |
|----|-------------------------------------|
| 20 | ❖ Wastewater Discharge: January DMR |
|----|-------------------------------------|

Mar

| | |
|----|---|
| 1 | <ul style="list-style-type: none"> ❖ Industrial and Hazardous Waste: annual summary report (electronic filers) ❖ Tier II chemical inventory reports ❖ Scrap-tire Transporter: annual activity report |
| 31 | <ul style="list-style-type: none"> ❖ Air Emission Inventory Annual Reports Due ❖ Multi-sector stormwater general permit for industrial storm water discharges: including benchmark monitoring summary, DMRs on numeric effluent limit (annual hazardous metals), and DMRs on sector-specific, numeric effluent limits |

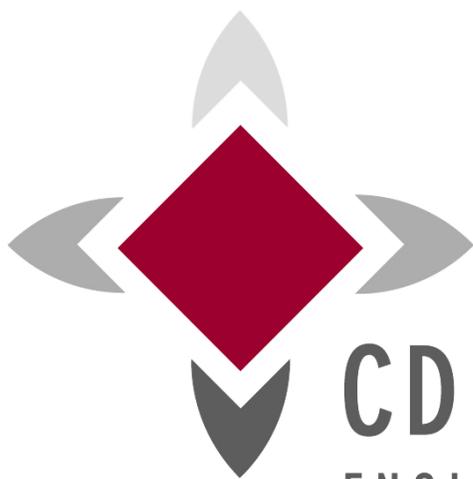
Plan Ahead!

Review any upcoming changes to you facility for environmental compliance to prevent any last minute issues from slowing down your progress.

CD Environmental appreciates the opportunity to provide this regulatory update to our customers and friends. CD is committed to helping you achieve your environmental compliance goals. Please let us know if there is anything we can assist with.

972-889-7200

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