

## ENVIRONMENTAL & ENERGY

### New U.S. EPA e-Manifesting System Took Effect June 30th

*By Laura Ragozzino, Esq.*

The U.S. Environmental Protection Agency (the “EPA”) launched its new [Hazardous Waste Electronic Manifest \(“e-Manifest”\) System](#) on June 30, 2018. The new requirements impact all U.S. companies that handle waste requiring a Resource Conservation and Recovery Act (“RCRA”) manifest, a regulated universe that includes approximately 150,000 entities across at least 45 industry segments. Under the new rules, regulated waste handlers will need to use the new paper or electronic EPA manifest form and waste receiving facilities will have to submit the new manifests to the e-Manifesting system, incurring a processing fee.

The goal of the new e-Manifesting system is to reduce costs and improve regulatory oversight and data quality. The EPA estimates that the manual processing and documentation of paper manifests costs regulators and companies \$193 million to \$400 million annually.

RCRA is the federal law that creates the framework for managing hazardous and non-hazardous solid waste. Since 1980, the EPA has required a RCRA manifest, a multi-copy paper form, to track hazardous waste from the time it leaves the generating facility until it reaches the off-site waste management facility that will store, treat, or dispose of it. The manifest helps the EPA verify proper waste handling.

E-Manifest requirements are effective in all states on June 30, 2018. These requirements apply to domestic hazardous waste (as defined at the federal and state level) and state-only regulated waste subject under state law to RCRA hazardous waste manifesting. The e-Manifesting system is a product of the 2012 Hazardous Waste Electronic Manifest Establishment Act and subsequent February 2014 and January 2018 final rulemakings. Starting June 30, receiving facilities are required to submit copies, whether electronic or paper, of RCRA waste manifests to the EPA within 30 days of receipt. Receiving facilities will also incur a processing fee for manifest submittal. In three years, paper manifests will be phased out of use.

The new requirements fall under RCRA enforcement policy. Noncompliance with RCRA, including improper manifesting, exposes waste handlers to substantial civil penalties.

Before this e-Manifesting system’s implementation, shipments of waste across state borders could create jurisdictional issues for states with enhanced regulatory requirements. Some states impose manifesting requirements that are more stringent than RCRA’s rules, or define hazardous waste more broadly than under RCRA. When waste generated in these more

stringent states was disposed of in less stringent states, the generating state lacked the ability to enforce the receipt of manifest copies from out-of-state receiving facilities. For example, if a disposal site in Ohio received waste oil from Connecticut that was classified as hazardous under Connecticut law but not classified as hazardous under Ohio law, then the Ohio disposal facility may or may not have submitted the manifest to Connecticut, and Connecticut did not have the ability to enforce its collection.

Now, under the 2012 Hazardous Waste Electronic Manifest Establishment Act, federal and state regulators can access complete cradle-to-grave waste manifesting records from the e-Manifest system because submitting manifests is compulsory. For example, as of June 30, 2018, if a disposal site in Ohio receives waste oil from Connecticut that is classified as hazardous under Connecticut law but not classified as hazardous under Ohio law, then the Ohio disposal facility must submit the manifest to the e-Manifest system, even if Ohio law does not require such submittal.

On or after June 30, waste generators, transporters, receivers, and disposers of waste regulated by the new regulations must track the waste on the new paper or electronic manifest, U.S. EPA Form 8700-22, and submit the manifest to the e-Manifest system. The EPA granted an initial extension of the 30-day manifest-receipt deadline for paper manifests received from June 30, 2018 through September 1, 2018. With this extension, receiving facilities may submit those manifests on or before September 30, 2018.

### **What Generators and Transporters Need to Know**

Waste handling facilities should review the waste and manifest requirements that pertain to their business. It is important to understand the laws and regulations of the generating and receiving state. Any waste defined as hazardous by the generating or receiving state, or any waste requiring tracking on a RCRA manifest (*i.e.*, a hazardous waste manifest), is subject to the e-Manifesting requirements.

Generators have the option to create and submit manifests electronically or to submit paper manifests to the e-Manifest system. The existing 6-copy manifest is being replaced with a new 5-copy form that must be ordered from a registered printer.

### **What Receiving and Disposal Facilities Need to Know**

The new manifesting requirements will impact both RCRA-permitted disposal facilities (*i.e.*, Treatment, Storage, and Disposal Facilities (“TSDFs”)) and non-TSDFs when such facilities receive waste that is either (1) non-hazardous but requires a RCRA manifest, or (2) is hazardous under the generating state’s laws and regulations. Therefore, the new e-Manifesting system extends the scope of regulatory obligations under federal law even if the law of the receiving state does not require a RCRA manifest for the waste at issue.

Receiving and disposal facilities must submit all RCRA manifests, paper or electronic, to the EPA. Receiving facilities need to obtain an EPA Identification number to use the e-Manifest system. To obtain an EPA ID number, facilities must submit EPA’s Site Identification form (U.S. EPA form 8700-12). EPA will charge receiving facilities a fee for each manifest

submitted. Fees, which are differentiated based on how the manifest is submitted, are projected to range from \$4 to \$20. Late payments are subject to interest penalties.

EPA Resources:

- EPA e-Manifest website: <http://epa.gov/e-Manifest>
- FAQs: <https://www.epa.gov/e-manifest/frequent-questions-about-e-manifest>
- Fact Sheets for e-Manifest Stakeholders: <https://www.epa.gov/e-manifest/fact-sheets-e-manifest-stakeholders>

To help its clients better understand the most efficient and cost-effective means of compliance, Cohen & Grigsby will continue to monitor this issue. If you have any questions, please contact Laura Ragozzino at (412) 297-4713 or [lragozzino@cohenlaw.com](mailto:lragozzino@cohenlaw.com). To receive future bulletins and news alerts, please send an e-mail to [bulletins@cohenlaw.com](mailto:bulletins@cohenlaw.com).

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