

危险化学品监管的法律与实践

2015 年 8 月天津滨海新区某危险化学品仓库发生剧烈爆炸，根据中国地震台的数据，爆炸产生的威力相当于 21 吨 TNT 即 53 枚战斧巡航导弹一起爆炸，造成了重大人员伤亡和财产损失。这一事件以惨重的代价表明了危险化学品监管与民众的性命攸关，了解并严格执行危险化学品监管的相关法律无疑构成有关企业合规的重要组成部分。本文将简介危险化学品在界定、生产、经营、使用、储存、废物处置中所需的重要证照及监管要求，以期有助于相关企业满足国家有关危险化学品的监管合规要求。

一、危险化学品的界定

1. 目录管理与鉴定补充

根据《危险化学品安全管理条例》(2013)，“危险化学品”是指具有毒害、腐蚀、爆炸、燃烧、助燃等性质，对人体、设施、环境具有危害的剧毒化学品和其他化学品。

我国对“危险化学品”的认定采取目录管理加鉴定补充管理的方式。具体而言，列入《危险化学品目录》(2015)的产品是危险化学品；未列入该目录的产品如果经理化性质鉴定，确定其具有危险性，也应按照危险化学品进行管理。

关于《危险化学品目录》(2015)，需要注意

的是：

- 首先，其下的条目是按照“品名”（即化学名）附“别名”进行列举的，专业性非常强。在判断某一日用化学品是否属于危险化学品时，需要先判断生活用品中的化学成分，再一一比照该目录查询。
- 其次，该目录不仅适用于纯净物，也适用于混合物。如果目录下的条目无含量说明，则是指该条目的工业产品或者纯度高于工业产品的化学品。如果目录下的条目有含量说明，则当混合物中的化学成分满足了该等含量、浓度、闪点等条件时，则该混合物方构成危险化学品。需要注意的是，该目录中的含量说明可能会存在例外¹，在判断时需全盘考虑。
- 第三，《危险化学品目录》(2015)并非一个完整目录，未列入该目录的产品不一定就不

¹ 例如，《危险化学品目录》(2015)第 2828 项“含易燃溶剂的合成树脂、油漆、辅助材料、涂料等制品”，只有当其闭杯闪点 $\leq 60^{\circ}\text{C}$ 时才有可能属于危险化学品；但与此同时，目录还规定，闪点高于 35°C 、但不超过 60°C 的液体如果在持续燃烧性试验中得到否定结果，则可将其视为非易燃液体，不作为易燃液体管理。因此，生活中的油性油漆有的应作为危险化学品管理，而有的则不作为危险化学品管理。

是危险化学品。对于未列入该目录但危险特性尚未确定的产品，生产商/进口商有义务按照《化学品物理危险性鉴定与分类管理办法》（2013）的规定，请求安监部门认可的鉴定机构进行鉴定。若鉴定结论显示该产品属于危险化学品，则生产商/进口商有义务根据《危险化学品登记管理办法》（2012）对其进行登记，再之后国家将择时统一组织将该产品纳入不断更新的危险化学品目录。

综上，危险化学品的界定是一个非常专业而繁杂的过程。首先，应了解产品所含的化学成分；然后应一一比照《危险化学品目录》（2015）及其含量要求，来判断是否为列入该目录中的危险化学品。针对危险性尚未确定的产品，生产商/进口商有义务向有关机构申请鉴定。

2. 标签信赖免责

生活中，人们会接触到各类具有危险性的生活用品，如杀虫剂、灭蚊灵、漂白粉、樟脑丸、油性指甲油、强力胶、打火石等。这些产品中的一种或多种主要化学成分往往落入了《危险化学品目录》（2015），因而有可能属于危险化学品。根据《化学品物理危险性鉴定与分类管理办法》（2013），产品生产商/进口商有义务对某成分落入《危险化学品目录》（2015）、但危险性尚不确定的产品申请鉴定，确定其是否属于危险化学品。但是，在实践中，生产商/进口商往往不愿意主动申请鉴定。作为经营者，如何判断这些危险性尚不确定的产品是否应按照危险化学品管理呢？

根据《危险化学品安全管理条例》（2013），危险化学品生产商/进口商应当向下游经营者提供与其生产/进口的危险化学品相符的《化学品安全技术说明书》，并在危险化学品包装（包括外包

装件）上粘贴或者拴挂与包装内危险化学品相符的化学品安全标签。故此，我们理解，如果某产品属于危险化学品，其上应设置有化学品安全标签。而对于下游经营者而言，其并没有法定义务去对某成分落入《危险化学品目录》（2015）、但危险性尚不确定的产品申请鉴定，因此，其应当有理由对产品的标签产生合理信赖（“**标签信赖免责**”），并据此推定无明显危险提示的产品不属于危险化学品。

3. 危险化学品与广义危险品的关系

我国法律下并没有统一的“危险品”的定义，而是分别针对“危险化学品”、“危险货物”、“危险废物”制定了《危险化学品目录》（2015）、《危险货物品名表》（GB12268-2012）、《国家危险废物名录》（2008）。这三个目录中的条目有交叉，但不完全相同，因为各条目适用于对危险品不同的监管环节：《危险化学品目录》（2015）适用于危险化学品的生产、经营、储存环节；《危险货物品名表》（GB12268-2012）适用于危险货物的运输环节；《国家危险废物名录》（2008）则适用于危险废物的处置环节。

需要注意的是，同一化学物品在不同环节是否具有危险性结论也不尽相同。以“香料制品，含有易燃溶剂”为例，其属于“危险货物”但不属于“危险化学品”。因此，香水的运输应遵循特殊规则，但在经营、储存环节则仅需按照普通易燃易爆品管理。一般而言，“危险化学品”一定属于“危险货物”，其废弃后一定属于“危险废物”；但是反过来，“危险货物”、“危险废物”的范围又分别大于“危险化学品”。因此，界定某物品是否属于危险品、以及判断其适用法律时，需要根据不同环节具体情况具体分析。

限于篇幅,本文将仅介绍危险化学品的生产、经营、使用、储存、废物处置,而不涉及“危险货物”的运输等问题。

二、危险化学品的生产、经营和使用

与危险化学品生产、经营和使用相关的主要法律法规包括:《安全生产法》(2014)、《安全生产许可证条例》(2014)、《危险化学品安全管理条例》(2013)、《危险化学品生产企业安全生产许可证实施办法》(2015)、《危险化学品经营许可证管理办法》(2015)、《危险化学品安全使用许可证实施办法》(2015)、《危险化学品环境管理登记办法(试行)》(2013)等。

1. 危险化学品的生产

根据《危险化学品生产企业安全生产许可证实施办法》(2015),从事生产最终产品或者中间产品列入《危险化学品目录》(2015)的企业应取得《危险化学品安全生产许可证》。《危险化学品安全生产许可证》的监管部门为安监部门。在获得《危险化学品安全生产许可证》之前,危险化学品生产建设项目应通过安全条件审查、安全设施设计审查、试生产和安全设施竣工验收。

需要说明的是,如果某危险化学品落入《实行生产许可证制度管理的工业产品及其细则目录》(2012),则生产企业还需取得《工业产品生产许可证》。《工业产品生产许可证》的监管部门为质监部门。从工业产品的角度而言,共有 22 项细分产品的《危险化学品产品生产许可证实施细则》(例如:化学试剂产品类、合成树脂产品类、油墨产品类等)以及 1 项《危险化学品包装物、容器产品生产许可证实施细则》。生产不同种类的危险化学品产品需依据不同类别的实施细则申请《工业产品生产许可证》。

2. 危险化学品的经营

根据《危险化学品经营许可证管理办法》(2015),从事列入《危险化学品目录》(2015)的危险化学品的经营(包括仓储经营)活动的企业应取得《危险化学品经营许可证》。即销售危险化学品的企业,以及经营危险化学品专用仓库的企业均需取得《危险化学品经营许可证》。

尽管如此,以下两种情形不需要取得《危险化学品经营许可证》:(a)依法取得《危险化学品安全生产许可证》的企业在其厂区范围内销售本企业生产的危险化学品的;以及(b)依法取得《港口经营许可证》的港口经营人在港区内从事危险化学品仓储经营的。

3. 危险化学品环境管理登记

3.1 现行规定

现行《危险化学品环境管理登记办法(试行)》(2013)规定,新建、改建、扩建危险化学品生产使用项目的,应当在项目竣工验收前办理危险化学品生产使用环境管理登记。此外,该现行规定只是笼统地要求危险化学品生产使用企业应办理危险化学品环境管理登记,但并没有明确触发登记的用量要求。

3.2 法规修订

环保部目前在就修订《危险化学品环境管理登记办法(试行)》(2013)向各地方环保局征求意见(下称“《环境登记修订征求意见稿》”。

根据《环境登记修订征求意见稿》,新建危险化学品生产使用企业,应当在企业正式运行 6 个月内办理危险化学品生产使用环境管理登记;危险化学品生产使用企业生产或使用某种重点管理的危险化学品年生产或使用量只有在大于等于

100 千克，或生产或使用其他危险化学品年生产或使用量大于等于 1 吨的情形下，方应办理危险化学品环境管理登记²。

此外，《环境登记修订征求意见稿》还要求已登记的危险化学品生产使用企业于每年 1 月向县级环保局办理年度备案。《环境登记修订征求意见稿》尚在征求意见中，待其定稿后我们将做更详细的阐述，并向您提示修改要点和注意事项。

4. 非危险化学品生产企业使用危险化学品

根据《危险化学品安全使用许可证实施办法》（2015），列入危险化学品安全使用许可适用行业、使用危险化学品从事生产并且达到危险化学品使用量的数量标准³的化工企业（危险化学品生产企业除外）应取得《危险化学品安全使用许可证》。但使用危险化学品作为燃料的企业无需取得《危险化学品安全使用许可证》。

三、危险化学品的进出口监管

根据《化学品首次进口及有毒化学品进出口环境管理规定》（1994）、《化学品首次进口及有毒化学品进出口环境管理登记实施细则》（1995）、《关于加强有毒化学品进出口环境管理登记工作的通知》（2009）、《危险化学品环境管理登记办法（试行）》（2013）的规定，进出口列入《中国严

格限制进出口的有毒化学品目录》中的化学品需要在环保部门进行有毒化学品进出口环境管理登记。

四、危险化学品的储存

与危险化学品储存相关的主要法律法规及国家标准包括：《消防法》（2009）、《仓库防火安全管理规则》（1990）、《常用化学危险贮存通则》（GB15603-1995）、《危险化学品及经营企业开业条件和技术要求》（GB18265-2000）、《易燃易爆性商品储存养护技术条件》（GB17914-2013）、《毒害性商品储存养护技术条件》（GB17916-2013）、《腐蚀性商品储存养护技术条件》（GB17915-2013）等。简而言之，危险化学品的储存需满足仓库防火、消防、装卸、堆放等规定。

《危险化学品经营企业开业条件和技术要求》（GB18265-2000）将危险化学品经营者细分为“批发业务的企业”和“零售业务的店面”。以下将分别讨论针对这两者的储存要求。

1. 危险化学品批发企业储存要求

根据《危险化学品安全管理条例》（2013），危险化学品应当储存在专用仓库、专用场地或者专用储存室（下称“专用仓库”）内，并由专人负责管理。

(1) 专用仓库经营者需持有《危险化学品经营许可证》

何谓专用仓库，企业出于储存危险化学品的需要而单独使用的仓库/储存室是否满足要求？根据我们的电话咨询，危险化学品“专用仓库”并非是指企业出于储存危险化学品的需要而单独使用的仓库/储存室，而是指经规划部门规划、安监部门审批、消防部门验收、具有特别资质证书的

² 危险化学品环境管理登记与《危险化学品安全使用许可证》属于两个不同的监管环节。首先，《危险化学品安全使用许可证》的监管部门为安监部门；而危险化学品环境管理登记的监管部门为环保部门。其次，《危险化学品安全使用许可证》适用于特定行业、特定用量、特定种类的危险化学品管理，且要求三个条件同时满足；而危险化学品环境管理登记适用于特定用量的危险化学品管理，不涉及行业要求和种类要求。再者，《危险化学品安全使用许可证》是行政许可，而危险化学品环境管理登记是行政备案。

³ 《危险化学品安全使用许可适用行业目录和危险化学品使用量的数量标准》（2013）

仓库。具体而言，危险化学品专用仓库有两种：一种为危险化学品生产者/经营者自有的仓库，另一种为专门提供危险化学品仓储服务的仓库。但无论哪种情形，危险化学品专用仓库的所有人均需持有《危险化学品经营许可证》（危险化学品生产企业的自用仓库，仅需取得《危险化学品安全生产许可证》，无需额外取得《危险化学品经营许可证》）。

(2) 危险化学品按照火灾危险性和耐火等级分类入库

就普通物品的一般储存规则而言，按照储存物品的火灾危险性，我国将仓库分为甲、乙、丙、丁、戊五类（甲类最高）。而根据仓库构筑件（墙、柱、梁、楼板、屋顶承重构件、疏散楼梯、吊顶）的燃烧性能和耐火极限，我国又将仓库分为一、二、三、四级耐火等级（一级最高）。火灾危险性分类和耐火等级分类两者间存在一定相关关系，能抵御火灾危险性越高的仓库耐火等级也要求越高，故实践中通常只存在 15 种细分仓库。

危险化学品应按照其理化性质的火灾危险性特征储存于不低于其火灾危险性的相应等级的仓库中。

此外，视储存危险化学品的不同，专用仓库还需满足特殊耐火等级的要求。比如，《危险化学品经营企业开业条件和技术要求》（GB18265-2000）规定，毒害性、腐蚀性危险化学品仓库的耐火等级不得低于二级；易燃易爆性危险化学品仓库的耐火等级不得低于三级。爆炸品应储存于一级轻顶耐火建筑内，低、中闪点液体、一级易燃固体、自燃物品、压缩气体和液化气体类应储存于一级耐火建筑的仓库内。

(3) 专用仓库选址要求

企业应根据《危险化学品经营企业开业条件和技术要求》（GB18265-2000），根据实际需要（诸如大小类型、面积规模），来确定专用仓库的选址所在。

尽管如此，我们理解，如果经营者租用已取得《危险化学品经营许可证》（经营范围带储存）的专用仓库，便可以合理信赖该仓库的选址已符合要求。

(4) 由专业资质人员负责

危险化学品仓库的保管员应经过岗前和定期培训，持证上岗。例如，如果仓库涉及特种设备（如压力容器、压力气瓶、压力管道、起重机械、专用车辆等），则特种设备操作员应取得《特种作业操作证书》。其他从业人员上岗证可由企业自行培训发放，也可由具备安全培训资质的培训机构、安监部门考核发证。安全管理人员/企业负责人要求大专以上学历化工专业毕业、2 年以上化工企业从业经历。

(5) 配备消防安全设施

此外，专用仓库还需配备相应的消防安全设施。视储存物品种类的不同，可能需要配备消防水池、自动雨淋系统、火灾自动报警系统、感光感烟探测器、气体浓度探测器等专业安全设施。

综上，危险化学品专用仓库需满足资质、火灾危险性和耐火等级、选址、专业人员、安全设施等要求。在实践中，危险化学品经营企业多直接租用专用仓库，并委托专用仓库出租方的有资质的操作员进行收发货物管理，即采取仓储外包的形式储存危险化学品。

2. 危险化学品零售店面储存要求

根据《危险化学品经营企业开业条件和技术要求》(GB18265-2000),对于零售业务的危险化学品店面,“店面内只许存放民用小包装的危险化学品,其存放总质量不得超过1吨。零售业务的店面与存放危险化学品的库房(或罩棚)应有实墙相隔。单一品种存放量不得超过500公斤,总质量不得超过2吨。”需要提示的是,危险化学品零售店面的经营者同样需要取得《危险化学品经营许可证》。

五、危险废物的处置

我国危险废物的主要监管法律为:《固体废物污染环境防治法》(2015)、《国家危险废物名录》(2008)、《危险废物鉴别标准通则》(2007)、《危险废物经营许可证管理办法》(2013)以及《废弃危险化学品污染环境防治办法》(2005)。

1. 危险废物的定义

根据《固体废物污染环境防治法》(2015),“固体废物”是指,在生产、生活和其他活动中产生的丧失原有利用价值或者虽未丧失利用价值但被抛弃或者放弃的固态、半固态和置于容器中的气态的物品、物质以及法律、行政法规规定纳入固体废物管理的物品、物质。“危险废物”是指,列入《国家危险废物名录》(2008)或者根据国家规定的危险废物鉴别标准和鉴别方法认定的具有危险特性的固体废物。

经比对《危险化学品目录》(2015)和《国家危险废物名录》(2008),我们理解,废弃的危险化学品均构成危险废物。

2. 危险废物处置资质

根据《固体废物污染环境防治法》(2015),危险废物产生者应将危险废物提供或者委托给有

《危险废物经营许可证》的单位从事收集、贮存、利用、处置等活动。

需要注意的是,根据《危险废物经营许可证管理办法》(2013),《危险废物经营许可证》有两种,一种为:《危险废物收集、贮存、处置综合经营许可证》,持证人可以从事各类别危险废物的收集、贮存、处置活动。另一种为:《危险废物收集经营许可证》,持证人只能从事机动车维修活动中产生的废矿物油和居民日常生活中产生的废镉镍电池的危险废物的收集。

据此,废弃的危险化学品应交由持有《危险废物收集、贮存、处置综合经营许可证》的单位处置。

3. 危险废物申报

根据《废弃危险化学品污染环境防治办法》(2005),产生废弃危险化学品的单位,应当建立危险化学品报废管理制度,制定废弃危险化学品管理计划并依法报环境保护部门备案,建立废弃危险化学品的信息登记档案。产生废弃危险化学品的单位应当依法向所在地县级以上地方环保局申报废弃危险化学品的种类、品名、成份或组成、特性、产生量、流向、贮存、利用、处置情况、化学品安全技术说明书等信息。前款事项发生重大改变的,应当及时进行变更申报。即,产生废弃危险化学品的单位应履行废弃危险化学品申报手续。

六、小结

危险化学品的界定采取目录管理加鉴定补充管理的方式。对于含有危险化学品成分、但危险性尚不确定的生活用品而言,应由生产商/进口商进行理化性质鉴定方能确定属性。

危险化学品在生产、使用、经营、储存、废物处置中均受到严格监管，相关企业须应依法取得所需有关许可。

对于危险化学品批发企业，需将危险化学品储存在专用仓库之中。实践中，危险化学品经营者多采取外包的方式储存。对于危险化学品零售店面，则仅可储存少量民用小包装产品。

张 薇 合 伙 人 电 话：86 10 8519 1308 邮箱地址：zhangw@junhe.com

李润泽 律 师 电 话：86 10 8519 1244 邮箱地址：lirz@junhe.com

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Law and Practice of Administration of Hazardous Chemicals

Before Rule No. 10 was issued, there were no relevant PRC laws that provided detailed and specific requirements in relation to the scope of the collection of and the preservation period for the archives of enterprises.

In August 2015, a violent explosion in a hazardous chemical warehouse in Tianjin Binhai New Area, China caused tremendous personal injuries and property losses. This tragedy once more shows that administration of hazardous chemicals is a matter of life and death, and that it is of great significance to know and strictly comply with the laws and regulations on hazardous chemicals. This article will briefly discuss the definition of hazardous chemicals, major permits or licenses required for their production, operation, usage, storage and waste disposal and regulatory requirements therefor.

Definition of Hazardous Chemicals

1. Catalogue Management plus Identification

According to the *Regulations on Safety Administration of Hazardous Chemicals* (《危险化学品安全管理条例》2013), “hazardous chemicals” refer to extremely toxic chemicals or other chemicals that are toxic, corrosive, explosive, flammable or of accelerant nature, which may cause damages to human health, facilities or environment.

PRC law adopts a “catalogue management supplemented by identification” method when determining whether or not certain product is hazardous chemical. Specifically, any product falling into the *Catalogue of Hazardous Chemicals* (《危险化学品目录》2015) is considered a hazardous chemical, while any product not falling into this catalogue but being identified to be in hazardous nature after physical and chemical tests is also administered as a hazardous chemical.

There are certain issues worth noting in terms of the *Catalogue of Hazardous Chemicals* (2015):

- First of all, items under the catalogue are listed by “names (chemical names)” along with “aliases”. Thus, one may need to have a firm understanding of chemicals to ascertain whether or not certain product is a hazardous chemical under the catalogue. For example, when defining if a certain daily-used chemical product is a hazardous chemical, one would need to firstly verify the chemical components of the product, and then check those components item by item in the catalogue.
- Secondly, the *Catalogue of Hazardous Chemicals* (2015) not only applies to pure substances but also to mixtures. If there’s no concentration requirement under an item,

then such item refers to chemicals with industrial grade purity or higher purity. If there are concentration requirements under an item, then only when certain component of a mixture satisfies the requirements (concentration, density, flash point, etc.), will the mixture be deemed as a hazardous chemical. There are some exceptions under certain concentration requirements¹. One thus needs to take the relevant requirements and exceptions into consideration when analyzing the compounds.

- Thirdly, the *Catalogue of Hazardous Chemicals* (2015) is an open list. Products not listed are not necessarily non-hazardous chemicals. If a product is not listed in the catalogue and its hazardousness is yet to be determined, the producer/importer has an obligation to engage an identification institution recognized by the Authority of Work Safety (“AWS”) to identify the product in accordance with the *Measures for the Administration of Identification and Classification of Physical Hazards of Chemicals* (《化学品物理危险性鉴定与分类管理办法》2013). If after identification, the product is deemed as a hazardous chemical, the producer/importer will have an obligation to register the product with AWS in accordance with the *Measures for the Administration of Hazardous Chemicals Registration* (《危险化学品登记管理办法》2012), and the AWS, together with other authorities, will incorporate such product

into the Catalogue of Hazardous Chemicals someday.

To sum up, identification of hazardous chemicals is a very professional and complicated matter. First of all, one needs to know the chemical components of the product. Then, one has to check the individual components (including the concentration requirements) with the *Catalogue of Hazardous Chemicals* (2015) to determine whether any component meets the hazardous chemical threshold. And if any product's hazardousness is not clear, the producer or importer is obligated to engage a qualified institution for identification.

2. Label Reliance Exemption

Many household items are in hazardous nature (for example, pesticide, ant killer, bleaching power, camphor ball, oily nail polish, glue, flint, etc.). Often, one or more components fall into the *Catalogue of Hazardous Chemicals* (2015), thus such products might be considered hazardous chemicals. According to the *Measures for Administration of Identification and Classification of Physical Hazards of Chemicals* (2013), the producer/importer has an obligation to conduct identification on the product whose hazardousness is uncertain (whose one or more components fall into the *Catalogue of Hazardous Chemicals*) and to ascertain whether or not such product is a hazardous chemical. However, in practice, a producer/importer usually is reluctant to entrust identification.

According to the *Regulations on the Safety Administration of Hazardous Chemicals* (2013), the hazardous chemical producer/importer shall provide the material safety data sheet (“MSDS”) corresponding to the hazardous chemical it produces/imports to operators, and shall affix chemical safety labels correspondingly on the packaging of such hazardous chemical (including the outer packaging). Therefore, if a product is a hazardous chemical, there will be chemical safety labels affixed on its packaging. As an operator does not have any legal

¹ For example, under Item 2828 of the *Catalogue of Hazardous Chemicals* (2015), with respect to “synthetic resins, paints, auxiliary materials, coatings and other products containing flammable solvent”, only when a product's closed-cup flash point is $\leq 60^{\circ}\text{C}$, there is a possibility for it to be classified as hazardous chemical; meanwhile, the catalogue also specifies that if the flash point of Item 2828 is between $35-60^{\circ}\text{C}$ and such product receives a negative result in the continuous burning test, then such product will not be regulated as flammable liquid. Therefore, some oily paints in daily life are treated and regulated as hazardous chemicals, while some other paints are not treated and regulated as hazardous chemicals.

obligation to engage in identification of a product that has one or more components falling into the *Catalogue of Hazardous Chemicals* (thus whose hazardousness is uncertain), the operator may reasonably rely on the label of the product and presume that a product whose label has no hazardousness manifestation is not a hazardous chemical (“**Label Reliance Exemption**”).

3. Hazardous Chemicals vs Hazardous Materials

There’s no uniform definition for “hazmat” under PRC law. Rather, there are three different regulatory catalogues on “hazardous chemicals”, “hazardous goods” and “hazardous wastes”. The catalogues are: the *Catalogue of Hazardous Chemicals* (2015), the *Catalogue of Hazardous Goods* (G12268-2012) and the *Catalogue of National Hazardous Waste* (2008). Some items listed in those three catalogues may overlap, yet the catalogues are not entirely identical. Each catalogue applies to different regulatory processes: the *Catalogue of Hazardous Chemicals* (2015) applies to the production, operation and storage process of hazardous chemicals; the *Catalogue of Hazardous Goods* (G12268-2012) applies to the transportation process of hazardous goods, and the *Catalogue of National Hazardous Waste* (2008) applies to the waste disposal process of hazardous waste.

Please note that the conclusion whether or not certain chemical product is “hazardous” may vary, subject to the different regulatory processes where it lies. For example, “a perfume product with flammable solvent” is “hazardous goods”, but not “hazardous chemical”. Thus, transportation of perfume shall comply with the special rules regulating the transportation of hazardous goods. But its operation and storage need only to comply with the general rules for inflammables and explosives, and not the rules for hazardous chemicals.

Generally speaking, “hazardous chemicals” are considered “hazardous goods”, and a “discarded

hazardous chemical” is definitely “hazardous waste”. However, the scope of “hazardous goods” or “hazardous waste”, respectively, is broader than that of hazardous chemical. Therefore, in determining whether or not a certain product is hazmat and what laws are applicable, one needs to analyze on a case by case basis, depending on the specific underlying regulatory processes.

Please note that this article is not intended to discuss the transportation of “hazardous goods”.

Production, Operation and Usage of Hazardous Chemicals

Chinese laws applicable to the production, operation and usage of hazardous chemicals mainly include the following:

- *Work Safety Law* (《安全生产法》 2014)
- *Regulations on Work Safety Permit* (《安全生产许可证条例》 2014)
- *Regulations on Safety Administration of Hazardous Chemicals* (2013),
- *Measures for the Implementation of Work Safety Permit for Hazardous Chemical Production Enterprises* (《危险化学品生产企业安全生产许可证实施办法》 2015)
- *Administrative Measures for Hazardous Chemical Operation Permit* (《危险化学品经营许可证管理办法》 2015)
- *Measures for the Implementation of Hazardous Chemical Safety Usage Permit* (《危险化学品安全使用许可证实施办法》 2015)
- *Measures for Hazardous Chemical Environmental Management Registration (Trial Implementation)* (《危险化学品环境管理登记办法 (试行)》 2013)

1. Production of Hazardous Chemicals

According to the *Measures for the Implementation of Work Safety Permit for Hazardous Chemical*

Production Enterprises (2015), a production enterprise whose finished product or intermediate product falls into the *Catalogue of Hazardous Chemicals* (2015) shall obtain a Hazardous Chemical Safety Production Permit. The regulatory authority for Hazardous Chemical Safety Production Permit is AWS. Before applying for the Hazardous Chemical Safety Production Permit, such hazardous chemical production and construction projects shall undergo certain procedures, including the safety condition review, review of the design of safety facilities, trial production, and inspection and acceptance of the completion of safety facilities.

Please note that, if a hazardous chemical falls into the *Catalogue of Industrial Products Requiring Production Permit and its Implementation Rules* (《实行生产许可证制度管理的工业产品及其细则目录》2012), the production enterprise shall obtain an Industrial Product Production Permit. The regulatory authority for the Industrial Product Production Permit is the Quality Supervision Bureau. As far as industrial products are concerned, there are 22 sub-categories of the applicable *Implementation Rules on Hazardous Chemical Products Production Permit* (《危险化学品产品生产许可证实施细则》2012) (for example, the rules for chemical reagent products, synthetic resin products, ink products, etc.) and one *Implementation Rules on Hazardous Chemical Packaging Products and Container Products Production Permit* (《危险化学品包装物、容器产品生产许可证实施细则》2012). To produce different types of hazardous chemicals (if as industrial products), a production enterprise is required to apply for different sub-categorized Industrial Product Production Permits in accordance with different implementation rules.

2. Operation of Hazardous Chemicals

According to the *Administrative Measures for Hazardous Chemical Operation Permit* (2015), an enterprise engaging in business operation (including storage operation) of any hazardous

chemical listed in the *Catalogue of Hazardous Chemicals* (2015) shall obtain a Hazardous Chemical Operation Permit. i.e., an enterprise which sells hazardous chemical or manages a Hazardous Chemical Special Purpose Warehouse shall obtain a Hazardous Chemical Operation Permit.

Despite the above, there are two exemptions where there's no need for the business operator to obtain a Hazardous Chemical Operation Permit: (a) a hazardous chemical production enterprise which has lawfully obtained a Hazardous Chemical Safety Production Permit sells the hazardous chemicals produced by itself within its factory area, and (b) a port operator which has lawfully obtained a port operation permit engages in the storage of hazardous chemicals within the port area.

3 Environment Management Registration for Hazardous Chemicals

3.1 Current Rules

According to the *Measures for Hazardous Chemical Environmental Management Registration (Trial Implementation)* (2013), for any newly constructed, reconstructed or expanded projects producing and using hazardous chemicals, an owner shall conduct environmental management registration for hazardous chemicals before the completion and acceptance of the project. However, this Measures merely generally requires that hazardous chemical production enterprises or enterprises using hazardous chemicals conduct environmental management registration for hazardous chemicals, without specifying what specific amount will trigger the registration requirement.

3.2 Law Developments

The Ministry of Environment of China is currently seeking comments from local environmental bureaus for the revisions to the *Measures for Hazardous Chemicals Environmental Management Registration (Trial Implementation)* (2013) (**"Draft for Comments"**).

According to the *Draft for Comments*, a newly constructed hazardous chemical production enterprise or usage enterprise shall conduct environmental management registration for hazardous chemicals within 6 months following the official operation of such enterprise. Only when the annual production volume (or annual usage volume) of a hazardous chemical under key management produced (or used) by it reaches 100kg or above, or when the annual production volume (or annual usage volume) of other hazardous chemicals produced (or used) by it reaches 1.0 ton or more, there's a need for such production enterprise (or usage enterprise) to conduct environmental management registration for hazardous chemicals².

In addition, the *Draft for Comments* requires the registered enterprise engaged in hazardous chemical production or usage to conduct annual filing with the local (at the county-level) environmental protection bureaus ("EPB") in January every year. We will keep you updated of any development in this connection.

4 Usage of Hazardous Chemicals by Enterprises Not Producing Hazardous Chemicals

According to the *Measures for Implementation of Hazardous Chemical Safety Usage Permit* (2015), chemical enterprises (other than hazardous chemical production enterprises) which are in certain industrial sectors that use hazardous

chemicals for production in certain quantity, shall obtain the Hazardous Chemical Safety Usage Permit. However, an enterprise using hazardous chemical as fuel, standing alone, is not required to obtain the Hazardous Chemical Safety Usage Permit.

Regulation on Import and Export of Hazardous Chemicals

According to the *Regulations on Environmental Management for Initial Import of Chemicals and Import and Export of Toxic Chemicals* (《化学品首次进口及有毒化学品进出口环境管理规定》1994), the *Implementation Measures on Environmental Management Registration for First Import of Chemicals and Import and Export of Toxic Chemicals* (《化学品首次进口及有毒化学品进出口环境管理登记实施细则》1995), the *Notice to Enhance Environmental Management Registration Works for Import and Export of Toxic Chemicals* (《关于加强有毒化学品进出口环境管理登记工作的通知》2009), the *Measures for Hazardous Chemicals Environmental Management Registration (Trial Implementation)* (2013), the importer or exporter shall conduct environment management registration for toxic chemicals with relevant EPB for importing or exporting chemicals listed on the *Catalogue of Toxic Chemicals Strictly Restricted by China for Import and Export* (《中国严格限制进出口的有毒化学品目录》).

Storage of Hazardous Chemicals

The main laws, regulations and national standards applicable for storage of hazardous chemicals include the following:

- *Fire Control Law* (《消防法》2009)
- *Administrative Rules on the Safety of Warehouse Fire Control* (《仓库防火安全管理规则》1990)
- *General Rules on the Storage of Ordinary Hazardous Chemicals* (《常用化学危险贮存通则》GB15603-1995)

² Environmental management registration for hazardous chemicals and Hazardous Chemical Safety Usage Permit are regulated in two different processes. First of all, the regulatory authority on the Hazardous Chemical Safety Usage Permit is the AWS, while the regulatory authority on the environmental management registration for hazardous chemicals is the EPB. Secondly, the Hazardous Chemical Safety Usage Permit applies to management of hazardous chemicals where all three conditions (specific industry, specific volume and specific types of hazardous chemicals) are satisfied. However, the environmental management registration for hazardous chemicals applies to the management of hazardous chemicals where as long as one condition (specific volume) is met in regardless of the industry and types requirement. Thirdly, the Hazardous Chemical Safety Usage Permit is a type of administrative approval, while environmental management registration for hazardous chemicals is administrative filing in nature.

- *Operation Commencement Conditions and Technological Requirements for Hazardous Chemical Enterprises* (《危险化学品及经营企业开业条件和技术要求》GB18265-2000)
- *Technical Conditions for the Storage and Maintenance of Flammable and Explosive Commodities* (《易燃易爆性商品储存养护技术条件》GB17914-2013)
- *Technical Conditions for the Storage and Maintenance of Corrosive Commodities* (《腐蚀性商品储存养护技术条件》GB17915-2013)
- *Technical Conditions for the Storage and Maintenance of Toxic Commodities* (《毒害性商品储存养护技术条件》GB17916-2013)

In brief, storage of hazardous chemicals must satisfy the fire control, loading and unloading and stacking requirements.

As the *Operation Commencement Conditions and Technological Requirements for Hazardous Chemical Enterprises* (GB18265-2000) distinguishes hazardous chemical operators by “wholesale enterprises” and “retail stores”, we will discuss below the storage requirements for those two types of business operators.

1 Storage Requirements for Hazardous Chemical Wholesale Enterprises

According to the *Regulations on the Safety Administration of Hazardous Chemicals* (2013), hazardous chemicals shall be stored in special purpose warehouses, places or storage rooms (the “**Special Purpose Warehouse**”) and managed by specially assigned personnel.

1.1 Hazardous Chemical Operation Permit Required

One may wish to make clear what a Special Purpose Warehouse is and whether a separate storeroom specifically allocated by an enterprise for purpose of storing hazardous chemicals serves the purpose. Based on our telephone consultations with certain competent officials, a

Special Purpose Warehouse does not refer to a separate warehouse/storeroom specifically allocated for purpose of storing hazardous chemicals, but rather means a warehouse that has obtained the approval from the zoning authority, AWS and fire bureau, thus holding a qualification certificate. Specifically, there are two types of Special Purpose Warehouses for hazardous chemicals: one type of such warehouse is owned and operated by the hazardous chemical producer or operator itself, the other type is owned by hazardous chemicals storage service provider; in either circumstances, an owner of the Special Purpose Warehouse shall have obtained the Hazardous Chemical Operation Permit.

1.2 Classification of Fire Hazardous Nature and Fire Resistance Capability Necessary for Storage

With respect to the storage rules for common goods, if classified by the fire hazardous nature of such goods, warehouses in China are categorized into five classes (Class A, B, C, D and E, in which Class A is the highest standard); and if classified by the combustion performance and fire endurance of the warehouse components (walls, pillars, beams, floors, roof bearing components, evacuation stairs, ceilings, etc.), warehouses in China are classified into four levels (Level I, II, III, and IV, in which Level I is the highest standard). Fire hazardous nature classification (火灾危险性分类) and fire resistance capability classification (耐火等级分类) have certain correlativity. Usually, a warehouse with a higher fire hazardous nature has a higher level of fire resistance capability. There are 15 types of sub-category warehouses.

Hazardous chemicals shall, subject to their physical and chemical characteristics, be stored in a warehouse whose corresponding fire hazardous nature is not lower than that of such hazardous chemicals.

In addition, the Special Purpose Warehouse

must also meet the requirements for fire resistance capability, depending on what hazardous chemicals are stored therein. For example, according to the *Operation Commencement Conditions and Technological Requirements for Hazardous Chemical Enterprises* (GB18265-2000), fire resistance capability for a warehouse storing toxic or corrosive hazardous chemicals shall be rated at least Level II. Fire resistance capability for a warehouse storing flammable and explosive hazardous chemicals shall be rated at least Level III. Explosive materials shall be stored in a Level I warehouse with a light roof. Liquid of low or medium flash point, level I flammable solid, self-igniting materials, compressed gas and liquefied gas shall be stored in a Level I warehouse.

1.3 Location Requirement for Special Purpose Warehouse

Special Purpose Warehouses with different areas and scales shall comply with different location requirements under the *Operation Commencement Conditions and Technological Requirements for Hazardous Chemical Enterprises* (GB18265-2000).

Despite the above, we understand that if a hazardous chemical operator leases a Special Purpose Warehouse from a lessor which has obtained the Hazardous Chemical Operation Permit (on which the business scope shall include “storage”), then the hazardous chemical operator may reasonably rely that such warehouse has satisfied the location requirement.

1.4 Keeping by Qualified Personnel

Staff working at a Hazardous Chemicals Special Purpose Warehouse shall have undergone pre-job trainings and periodic trainings thereafter, and shall hold relevant qualifications. For example, if special equipment is utilized in a warehouse (i.e., pressure containers, pressure bottles, pressure pipes, lifting machines, special vehicles, etc.), then the operator of special

equipment shall obtain the Operator Certificate for Special Equipment. A qualified safety manager/principal must have a college degree with a major in chemical engineering, and have at least 2-year working experience in the chemical industry. Other personnel shall satisfy other qualification requirements.

1.5 Equipped with Fire Control Facilities

A Special Purpose Warehouse should be equipped with relevant fire control facilities. Depending on what goods will be stored, the warehouse may need to be equipped with water tanks, an automatic deluge system, automatic fire alarm system, smoke detectors, gas concentration detectors or other professional security facilities.

In sum, a Hazardous Chemicals Special Purpose Warehouse must satisfy the qualification requirement, fire hazardous nature classification and fire resistance capability classification, location requirement, personal qualification requirement, and facilities requirement. Given this, it is common to see hazardous chemicals operators to lease Special Purpose Warehouses directly to manage the receipt and delivery of hazardous chemicals.

2 Storage Requirements for Hazardous Chemicals Retail Stores

According to the *Operation Commencement Conditions and Technological Requirements for Hazardous Chemical Enterprises* (GB18265-2000), a hazardous chemical retail store may only keep family-use small packaging hazardous chemicals for a total amount not exceeding 1.0 ton. The retail store shall be separated by a solid wall from its storeroom (or storing tent). A single variety kept in the retail store shall not exceed 500kg, while the total amount shall not exceed 2.0 tons. Please note that, hazardous chemicals retail store operator must also obtain the Hazardous Chemical Operation Permit.

Disposal of Hazardous Waste

The laws and regulations applicable to hazardous waste disposal mainly include the following:

- *Law on the Prevention and Control of Environmental Pollution by Solid Waste* (《固体废物污染环境防治法》2015)
- *National Catalogue of Hazardous Waste* (《国家危险废物名录》2008)
- *General Principles for Identification of Hazardous Waste* (《危险废物鉴别标准通则》2007)
- • *Measures for Administration of Hazardous Waste Operation Permit* (《危险废物经营许可证管理办法》2013)
- *Measures on the Prevention and Control of Environmental Pollution of Hazardous Chemical Waste* (《废弃危险化学品污染环境防治办法》2005)

1 Definition of Hazardous Waste

According to the *Law on the Prevention and Control of Environmental Pollution by Solid Waste* (2015), "solid waste" refers to such matters and substances in solid, semi-solid, or gaseous state that are kept in containers, generated in the course of production, human's daily life and other activities that have lost their value in use, or are discarded or abandoned although they have not lost their value, and other matters and substances identified by national laws and administrative regulations as solid waste. "Hazardous waste" refers to solid waste that is included in the *National Catalogue of Hazardous Waste* (2008), and other hazardous solid waste identified by national standards and identification methods as hazardous waste.

By comparing the *Catalogue of Hazardous Chemicals* (2015) and the *National Catalogue of Hazardous Waste* (2008), we understand that all discarded hazardous chemicals are hazardous waste.

2 Qualification for Hazardous Waste Disposal

According to the *Law on the Prevention and Control of Environmental Pollution by Solid Waste* (2015), an enterprise generating hazardous waste shall entrust a qualified entity (i.e. holding the Certificate of Hazardous Waste Operation Permit) for collection, storage, utilization, disposal of its hazardous waste.

Please note that there are two types of the Certificate of Hazardous Waste Operation Permit under the *Measures for the Administration of Hazardous Waste Operation Permit* (2013): one is the Certificate of Comprehensive Operation Permit for Collection, Storage, and Disposal of Hazardous Waste, enabling the holder to engage in all kinds of activities in relation to the collection, storage and disposal of hazardous waste; and the other one is the Certificate of Operation Permit for Collection of Hazardous Waste, the holder of which may only conduct activities of collecting waste mineral oils derived from the maintenance of motor vehicles and of collecting Cd-Ni batteries abandoned in human's daily life.

Based upon the above, a waste generator shall entrust an entity holding the Certificate of Comprehensive Operation Permit for Collection, Storage, and Disposal of Hazardous Waste for collection, storage and disposal of its hazardous waste.

3 Declaration of Hazardous Waste

According to the *Measures on the Prevention and Control of Environmental Pollution of Hazardous Chemical Waste* (2005), an enterprise generating hazardous chemicals waste shall formulate hazardous chemicals waste management measures, develop plans for control and file them with the local EPB. It should further provide the information on the types, names, components, characteristics, quantities, flow direction, storage, utilization, disposal and chemicals MSD sheet to the local EPB for

waste declaration. In case of any major change to the above matters, the enterprise shall file for alteration in a timely manner.

Summary

Hazardous chemicals are strictly regulated in

their production, usage, operation, storage and waste disposal processes. Failure to obtain the required permits or comply with the relevant requirements under the applicable law may lead to serious legal consequences for violators.

ZHANG Wei	Partner	Tel: 86 10 8519 1308	Email: zhangw@junhe.com
LI Runze	Associate	Tel: 86 10 8519 1244	Email: lirz@junhe.com

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