

**Regulatory Updates**  
**Compiled for the Pine Chemicals Association**  
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UPCOMING CONFERENCES

- PCA Spring Meeting, 5/14-16/2024, Palm Beach Gardens FL**
- NSC Spring Safety Conference and Expo, 5/14-16/2024, Rosemont IL
- ASSP Safety Conference and Expo, 8/7-9/2024, Denver CO
- NSC Fall Safety Conference and Expo, 9/13-19/2024, Orlando FL
- PCA 2024 International Conference, Fall 2024, dates TBD, Helsinki, Finland

## SAFETY

**OSHA Reveals Final Worker Walkaround Designation Process Rule – Effective May 31, 2024** – “After an unusually short time at OMB, . . . OSHA revealed a pre-publication version of its Final [Worker Walkaround Representative Designation Process Rule](#). The Official Final Rule will issue when it is published in the Federal Register next week, on April 1, 2024, and it will go into effect on May 31, 2024.” Read the full article [here](#). (OSHA Defense Report, Eric Conn, et al., 3/29/2024.)

The Federal Register states, “In this final rule, OSHA is amending its Representatives of Employers and Employees regulation to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party; such third-party employee representative(s) may accompany the OSHA Compliance Safety and Health Officer (CSHO) when, in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to aid in the inspection.” (89 FR 22558, 4/1/2024.)

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## ENVIRONMENT

### **New Response Plans for Hazardous Substances Required for Many Facilities** - “US

EPA published a new Clean Water Act rule requiring thousands of facilities to create a Facility Response Plan (FRP) to prepare for a potential release of a hazardous substance to water. The Final Rule takes effect on May 28, 2024, and gives covered facilities 3 years (until June 1, 2027) to prepare, submit, and implement a compliant plan. After June 1, 2027, EPA will require newly constructed facilities to submit and implement a plan *prior to the start of operations* (incl. a short start up period adjustment phase). [See the Final Rule in the March 28 Federal Register](#). . . The Clean Water Act regulations designate hazardous substances in 40 CFR Part 116. The new rule requires a hazardous substance Facility Response Plan (FRP) for any facility that:

- Is located within one-half-mile of a protected water, and
- Has 1,000x the RQ of a CWA hazardous substance or more on site at any time, and
- Could reasonably be expected to cause substantial harm to the environment by discharging a CWA hazardous substance into or on the navigable waters or a conveyance or navigable waters...”

Read the full article [here](#). (Lion Technology, Inc., Roger Marks, 3/28/2024.)

**EPA Finalizes Major Changes to RMP Rule** - US EPA has issued a final rule for major revisions to the Risk Management Program (RMP Rule). This rule is likely to significantly affect another of facilities in our industry. Here are some highlights:

#### “Hazard Evaluation Amplifications

The amendments require facilities to address and plan for natural hazards, power loss, and enhanced facility siting requirements. . .

#### Safer Technologies and Alternatives Analysis, and Practicability Assessments

A subset of facilities now must conduct Safer Technologies and Alternatives Analysis (STAA) in their PHAs, examining and documenting the availability of “inherently safer technology or design” (IST / ISD), as well as passive measures, active measures, and procedural measures. This STAA requirement applies to Program 3 processes in the petroleum refining (NAICS 324) and chemical manufacturing (NAICS 325) sectors. . .

#### Root Cause Analysis

The amendments require Program 2 or 3 processes to conduct a Root Cause Analysis . . . as part of each incident investigation. Root cause is now defined as ‘a fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in management systems and, if applicable, in process design’. . .

#### Third-Party Compliance Auditing

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The amendments require Program 2 or 3 processes to hold a third-party compliance audit after a qualifying release, or when the implementing agency determines conditions exist that “could lead” to an accidental release. . .

#### Employee Participation

Program 3 processes now must consult with knowledgeable employees when making decisions on recommendations and findings from PHAs, compliance audits, or incident investigations. Program 3 processes must also provide employees that are knowledgeable in a process the authority to recommend that an operation or process be shut down based on potential for a catastrophic release; . . . Program 2 and 3 processes must develop and implement a process to allow employees and their representatives to anonymously report to the owner / operator or EPA unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or other RMP noncompliance. The facility must provide clear instructions for how to report to both entities, and keep a record of reports of non-compliance. . .

#### Emergency Response

Non-responding facilities now must maintain and implement, as necessary, procedures for informing the public and the appropriate federal, state, and local emergency response agencies about accidental releases of RMP-regulated substances. Both responding and non-responding facilities must partner with local response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by a release. . . Also, for responding facilities, the amendments revise the required frequency of field exercises to at least every 10 years, and bolster the required documentation elements for field and tabletop exercises. . .

#### Public Information Availability

The amendments require facilities to provide their chemical hazard information to a subset of the public, upon request, in the language requested (at least two major languages used locally, and English). The subset consists of those persons residing, working, or spending significant time within a six-mile radius of the facility. . .

#### Compliance Dates

- New STAA, root cause analysis, third-party compliance audit, employee participation, emergency response public notification and exercise evaluation reports, and information availability provisions: Unless otherwise stated, three years after the May 10, 2024, effective date of the final rule.
- Revised emergency response field exercise frequency: by March 15, 2027, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and August 31, 2022, in accordance with 40 CFR 68.96(b)(1)(ii).
- Update and resubmit RMPs to reflect new and revised data elements: four years after the May 10, 2024, effective date.
- Standby or backup power for air monitoring and control equipment: three years after the May 10, 2024, effective date.” Read the full article [here](#). (Lexology, Spencer Fane LLP - Paul Jacobson, 3/12/2024.

**EPA Bans Ongoing Uses of Asbestos** - “On March 18, 2024, US EPA announced the [prohibition of ongoing uses of chrysotile asbestos](#) with a Final Rule. The ban is the first rule finalized under the 2016 amendments to the Toxic Substances Control Act (TSCA). This rule bans:

- The import of asbestos for chlor-alkali use immediately.
- Most sheet gaskets that contain asbestos two years after the effective date of the final rule, with five-year phase-outs for some sheet gaskets.\*
- Use of asbestos in oilfield brake blocks, aftermarket automotive brakes and linings, other vehicle friction products, and other gaskets six months after the effective date of the final rule.

\* A five-year phaseout period applies to sheet gaskets used in titanium dioxide production and the processing of nuclear material.

The rule enacts strict workplace safety measures to protect workers from asbestos exposure during any phase out periods longer than two years. The Final Rule also aims to ensure that asbestos is disposed of in line with industry standards, OSHA requirements, and the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). The new rule also imposes recordkeeping requirements. EPA will release Part 2 of its draft risk evaluation for asbestos soon. The Agency publish the final risk evaluation by Dec. 1, 2024. Part 2 will evaluate other types of asbestos fibers.” Read the full article [here](#). (Lion Technology, Inc., Nick Waldron, 3/19/2024.)

**EPA Rebuked by D.C. Circuit Over State Air Pollution [SSM] Plans** – “EPA ordered revisions for startups, shutdowns, malfunctions. [The] court said blanket removal of exemptions violates Clean Air Act. The US Environmental Protection Agency can’t require states to revise air pollution plans solely to remove exemptions for pollution released during startups, shutdowns, and malfunctions at facilities, the D.C. Circuit ruled Friday. The agency exceeded its statutory authority in calling for a blanket removal of these ‘SSM’ exemptions from the state plans—known as SIPs—without demonstrating that the exemptions materially impede compliance with Clean Air Act requirements, a three-judge panel on the US Court of Appeals for the D.C. Circuit said in a per curiam opinion.” Read the full article [here](#). (Bloomberg Law, Samantha Hawkins, 3/1/2024.)

*Send your suggestions and comments to [ehs@pinechemicals.org](mailto:ehs@pinechemicals.org)*

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