

**Regulatory Updates**  
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## **SAFETY**

### **OSHA Recordkeeping Updated Guidance**

OSHA has issued further temporary enforcement guidance effective May 26, 2020 related to the COVID-19 pandemic for Recording and Reporting Occupational Injuries and Illnesses required under 29 CFR Part 1904. This replaces the April 10, 2020 guidance as of the effective date. For more information, click [here](#).

### **Temporary N95 Guidance Expanded**

OSHA has expanded its temporary guidance for respirator fit testing during the COVID-19 pandemic. Temporary guidance for the healthcare industry is now expanded to all workplaces with required respirator use. OSHA field offices will exercise enforcement discretion concerning the annual fit-testing requirements, as long as employers have made good-faith efforts to comply with the requirements of the Respiratory Protection standard guidance. Employers should also assess their engineering controls, work practices, and administrative controls on an ongoing basis to identify any changes they can make to decrease the need for N95s or other filtering facepiece respirators. When reassessing these types of controls and practices, employers should, for example, consider whether it is possible to increase the use of wet methods or portable local exhaust systems or to move operations outdoors. In some instances, an employer may also consider taking steps to temporarily suspend certain non-essential operations. Further, given additional concerns regarding a shortage of fit-testing kits and test solutions (e.g., Bitrex™, isoamyl acetate), employers are further encouraged to take necessary steps to prioritize use of fit-testing equipment to protect employees who must use respirators for high-hazard procedures. If fit testing isn't possible and a respirator model is out of stock, employers should ask the manufacturer for recommendations on a different model that fits similarly. The guidance will remain in effect until further notice. Click [here](#) for details. (OSHA Website)

### **Good Faith Efforts to be Taken into Consideration**

Based on a May 16 [memo](#), OSHA inspectors will consider employer good-faith efforts in complying with safety and health regulations during the COVID-19 pandemic. Because the pandemic could limit the availability of essential safety, inspection, training industrial hygiene, and other services, the agency is asking its inspectors to assess an employer's good faith efforts. During the course of an inspection, OSHA Area Offices will assess an employer's efforts to comply with standards that require annual or recurring audits, reviews, training, or assessments. OSHA inspectors should evaluate whether the employer made good faith efforts to comply with applicable OSHA standards and, in situations where compliance was not possible, to ensure that employees were not exposed to hazards from tasks, processes, or equipment for which they were not prepared or trained. As part of assessing whether an employer engaged in good faith compliance efforts, inspectors should evaluate whether the employer:

- thoroughly explored all options to comply with the applicable standard(s) (e.g., the use of virtual training or remote communication strategies),

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- any interim alternative protections implemented or provided to protect employees, such as engineering or administrative controls, and
- whether the employer took steps to reschedule the required annual activity as soon as possible.

In instances where an employer is unable to comply with OSHA-mandated training, audit, assessment, inspection, or testing requirements because local authorities required the workplace to close, the employer should demonstrate a good faith attempt to meet the applicable requirements as soon as possible following the re-opening of the workplace. (OSHA website)

### **National Safety Council Launches COVID-19 Return to Work Effort**

The National Safety Council has launched *SAFER: Safe Actions for Employee Returns* on April 22. SAFER is a partnership between NSC and companies, trade associations, leading safety organizations and public health professionals and experts. NSC convened the SAFER task force to issue recommendations and develop guidance for employers of all sectors and sizes as they determine their needs to ensure the health and safety of their workers. This task force is comprised of large and small Fortune 500 companies, nonprofits, legal experts, public health professionals, medical professionals and government agency representatives – that makes recommendations based on best practices and proven workplace safety strategies. The task force delivers resources, such as guidebooks and checklists, to equip employers with the tools they need to protect workers during this time of uncertainty. Playbooks, policies, and procedures will include general and sector-specific documents and will help align worker safety with business objectives. Click [here](#) for details. (NSC website)

### **Respirator Decontamination Options**

OSHA issued interim guidance to for enforcing the Respiratory Protection standard, 29 CFR §1910.134, with regard to the reuse of filtering facepiece respirators (FFRs) that have been decontaminated through certain methods. Due to the impact on workplace conditions caused by limited supplies of FFRs, employers should reassess their engineering controls, work practices, and administrative controls to identify any changes they can make to decrease the need for respirators. If respiratory protection must be used, and acceptable alternatives are not available for use in accordance with OSHA’s previous COVID-19 enforcement memoranda, NIOSH has identified limited [available research](#) that suggests the following methods offer the most promise for decontaminating FFRs:

- Vaporous hydrogen peroxide;<sup>[9]</sup>
- Ultraviolet germicidal irradiation; and/or
- Moist heat (e.g., using water heated in an oven).

If such methods are not available, the above-referenced NIOSH-evaluated research showed the following methods could also be suitable decontamination options:

- Microwave-generated steam; and/or
- Liquid hydrogen peroxide.

Click [here](#) for details. (OSHA Website)

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**OSHA Issues Frequently Asked Questions and Answers About Face Coverings, Respirators** - OSHA has published a series of [frequently asked questions and answers](#) regarding the use of masks in the workplace.

## ENVIRONMENT

### TSCA Chemical Data Reporting Deadline Extended

The Chemical Data Reporting (CDR) deadline has been pushed back from Sept. 30 to Nov. 30, 2020. The window for reporting opened on June 1, 2020. See the notification in the [Federal Register](#). The CDR Rule requires manufacturers (including importers) of substances listed on the TSCA Chemical Inventory to submit data to EPA every four years. (EPA Website)

### Particulate Matter Limits to Remain Unchanged

On April 14, 2020, after carefully reviewing the most recent available scientific evidence and technical information, and consulting with the Agency's independent scientific advisors, the EPA is proposing to retain, without revision, the existing primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for particulate matter. Currently, the EPA has primary and secondary standards for PM<sub>2.5</sub> (annual average standards with levels of 12.0 µg/m<sup>3</sup> and 15.0 µg/m<sup>3</sup>, respectively; 24-hour standards with 98th percentile forms and levels of 35 µg/m<sup>3</sup>) and PM<sub>10</sub> (24-hour standards with one-expected exceedance forms and levels of 150 µg/m<sup>3</sup>) . . . Comments on the proposed action must be received on or before June 29, 2020. (EPA website)

### U. S. Supreme Court's Clean Water Act Ruling

"In a highly anticipated opinion the United States Supreme Court held that the Clean Water Act ("CWA" or "Act") applies to the release of pollutants that are eventually conveyed through groundwater into navigable waters.

The Court's decision in *County of Maui, Hawaii v. Hawaii Wildlife Fund*, held that a CWA permit is required where pollution is discharged from a point source either directly into navigable waters or "when there is a functional equivalent of a direct discharge The standard set forth in the Court's decision will impact the National Pollutant Discharge Elimination System ("NPDES") and the potential for future CWA enforcement actions.

The CWA is the main federal water pollution statute. It defines pollutants broadly The Act requires a permit for discharges through groundwater onto federal waters. It forbids the addition of any pollutant from a "point source" to navigable waters without an appropriate permit. Under the CWA, a point source is a discernible conveyance such as a well, pipeline, or other conduit.

In *County of Maui*, local environmental groups sued alleging that the County of Maui was discharging a "pollutant" into navigable waters without the required permit. Maui County's wastewater reclamation facility collects sewage from surrounding areas, partially treats it, and each day pumps about 4 million gallons of treated water into the ground through four wells.

The effluent water then travels about half a mile through groundwater to the Pacific Ocean. The district court granted summary judgment to environmental groups. The Ninth Circuit Court of Appeals affirmed the lower court, espousing a broad rule that a permit is required when “pollutants are fairly traceable from the point source to a navigable water.”

The 6-3 decision by the Court rejected the Ninth Circuit’s test that would have allowed for exemptions for indirect pollution. The majority of Justices created a new test, ruling that a permit must be obtained for indirect contamination that’s the “function equivalent” of a direct discharge into federal waterways.” (Lexology, HFW - Svetlana Sumina and Michael Wray, June 2, 2020.)

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