

Regulatory Updates
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SAFETY

OSHA Issues Publication for COVID-19 Ventilation in the Workplace – OSHA has issued a one-page publication on this subject. Click [here](#). Since other COVID related topics, such as recordkeeping, respirator guidance, definition of close contact, etc. change quickly, periodically check the OSHA and CDC websites for updates. (OSHA website).

De Facto Expansion of PSM Affirmed in Wynnewood Case – “Earlier in March, the Occupational Safety and Health Review Commission affirmed 12 citations alleging violations of various provisions of OSHA’s Process Safety Management standard, affirmed all as serious but not all repeat violations and assessed a total penalty of \$58,000. Wynnewood continued to argue that the process safety management standard only applies to processes that involve ‘a threshold amount of highly hazardous chemicals,’ of which the boiler that exploded did not.’ The 10th Circuit Court of Appeals (one step below the Supreme Court) decision affirmed the review commission’s finding that the boiler’s proximity to chemicals is part of a process because it was ‘located such that a highly hazardous chemical could be involved in a potential release.’ Read the full article [here](#). (OK Energy Today, Jerry Bohnen, 10/29/2020).

Hours Of Service Final Rule – “On June 1, 2020, FMCSA (Federal Motor Carrier Safety Administration) revised four provisions of the hours of service regulations to provide greater flexibility for drivers without adversely affecting safety. Motor carriers are required to comply with the new Hours Of Service regulations starting on September 29, 2020. What has changed?

- Short-haul Exception - Expands the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exception.
- Adverse Driving Conditions Exception - Expands the driving window during adverse driving conditions by up to an additional 2 hours.
- 30-Minute Break Requirement - Requires break of at least 30 consecutive minutes after 8 cumulative hours of driving time (instead of on-duty time) and allows an on-duty/not driving period to qualify as the required break.
- Sleeper Berth Provision - Modifies the sleeper berth exception to allow a driver to meet the 10-hour minimum off-duty requirement by spending at least 7 hours of that period in the berth combined with a minimum off-duty period of at least 2 hours spent inside or outside the berth, provided the two periods total at least 10 hours. When used together as specified, neither qualify period counts against the 14-hour driving window.”

(FMCSA website).

ENVIRONMENT

EPA Proposes Relaxed Storage Tank Inspections Subject to NSPS Section Kb - The U.S. Environmental Protection Agency (EPA) is proposing amendments to the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23,

1984. They are proposing specific amendments that would allow owners or operators of storage vessels subject to the Standards of Performance for Volatile Organic Liquid Storage Vessels and equipped with either an external floating roof (EFR) or internal floating roof (IFR) to voluntarily elect to use the alternative standard of in-service testing, in lieu of the emptying and entering the tank. Read more [here](#). (Federal Register, 10/16/2020).

EPA’s Audit Policy is Gaining in Popularity – The EPA Audit programs were developed to motivate owners of facilities to participate and start making necessary changes to their equipment to address violations and return to compliance, improving air quality in surrounding communities. Participation has significantly increased in recent years. Read more [here](#). (EPA website).

Chemical Data Reporting Deadline Officially Extended – “On November 25, 2020, EPA [formally extended](#) the deadline for the 2020 Toxic Substances Control Act (TSCA) Chemical Data Reporting (CDR) submissions -- from November 30, 2020 to January 29, 2021. EPA noted that this will be the final extension for the 2020 CDR. EPA previously announced an extension of the reporting period from its original September 30, 2020 deadline via an April 9 Federal Register notice. EPA extended the deadline in response to comments from stakeholders who raised concerns about the ability to timely report due to technical issues with electronic reporting using EPA’s Central Data Exchange (CDX) system and staffing and other resource limitations arising from the COVID-19 pandemic. EPA references six letters received by the Agency over the past two months raising these issues. The regulated community will likely recall that EPA extended the submission deadline for the 2016 CDR due to problems with EPA’s electronic reporting system.” (Lexology, Keller and Heckman LLP - Gregory A. Clark, 11/25/2020).

Once In, Always In Policy is Formally Withdrawn – “On November 19, 2020, the United States Environmental Protection Agency (EPA) published a [final rule](#) in the Federal Register formally jettisoning the Agency’s long-standing “Once In, Always In” (OIAI) policy that had applied to major sources of hazardous air pollutants (HAPs) for approximately 25 years. Under the OIAI policy, sources that were subject to major source emission standards for HAPs could not change their status with regard to those standards even if their emissions were well below applicability thresholds. In 2018, EPA revisited and revised this policy to allow sources to limit their emissions and avoid compliance with major source HAP requirements at any time. This rulemaking codifies this policy change, but it does not fully address how sources demonstrate that reclassification is appropriate or the standards that must be met following reclassification. We expect this rulemaking, which becomes effective on January 19, 2021, to be challenged and potentially reconsidered by the Biden Administration.” (Lexology, Quarles & Brady LLP - Cynthia A. Faur, 11/20/2020).

EPA Issues Draft National Recycling Strategy, Requests Comments - “The U.S. Environmental Protection Agency (EPA) has released a [draft National Recycling Strategy](#). The draft strategy “identifies strategic objectives and actions needed to create a stronger, more

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resilient, and cost-effective U.S. municipal solid waste recycling system,” reports EPA in a [press release](#) on the draft strategy. The release also identified factors stressing recycling systems in the U.S. as:

- confusion about what materials can be recycled;
- recycling infrastructure that has not kept pace with today’s diverse and changing waste stream;
- reduced markets for recycled materials; and
- varying methodologies to measure recycling system performance.”

(Lexology, Keller and Heckman LLP, 11/9/2020).

Regulations Pertaining to Startup, Shutdown, and Malfunction Plans are on an Uncertain Path

– The following article was written prior to the election, so we’ll keep an eye out for further changes. This article gives a good summary to date, excerpts follow. Read the full article [here](#). “In 2015, Obama-administration EPA issued guidance after finding that exemptions and affirmative defense provisions for SSM-related exceedances were inconsistent with the Clean Air Act since these provisions prevented emission limitations from applying on a “continuous” basis. EPA issued a SIP call requiring dozens of states and local jurisdictions to revise their SIPs (State Implementation Plans) by either eliminating their SSM provisions or modifying them to be consistent with the agency’s new policy. Promptly challenged in the D.C. Circuit, the 2015 SIP call had not yet been decided when the Trump administration took office in 2017 and requested the court to put the case on hold while it reconsidered the SIP call. EPA’s [new SSM guidance](#), released on October 9, denoted the agency’s latest maneuver in what has now become a year-long effort to resolve this highly contentious issue. The new guidance reversed EPA’s 2015 SSM policy, now permitting SSM exemptions and affirmative defenses in SIPs under certain circumstances. The guidance also announced EPA’s intent to review each SIP call remaining from the 2015 action and determine whether it should be maintained, modified, or withdrawn, considering the agency’s new SSM policy. EPA plans to conduct individual notice-and-comment rulemakings for each affected state and anticipates completing its review of all remaining SIPs under the 2015 SIP call by December 31, 2023. While those state-specific rulemakings will constitute final agency action reviewable in the courts, EPA indicates that its new SSM policy is not final agency action and therefore unreviewable. However, if a new administration wishes to rescind or modify EPA’s new guidance, it will likely contend with a recently signed rule, imposing a public notice-and-comment process on the issuance, rescission, or reinstatement of agency guidance. This, in turn, will continue to leave the fate of the remaining SSM provisions highly uncertain for years to come.” (Lexology, Troutman Pepper - Carroll "Mack" W. McGuffey III and Melissa Horne, 10/20/2020).

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