

Regulatory Updates
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SAFETY

OSHA Top 10 Violations for 2020 – “OSHA has announced its preliminary Top 10 most frequently cited workplace safety standards for fiscal year 2020. . . Although multiple standards swapped positions, the Top 10 violations from FY 2019 to FY 2020 did not change. Ladders climbed to a top-five spot, and Respiratory Protection rose to the third rank from fifth. Additionally, the data show that Fall Protection – General Requirements is OSHA’s most frequently cited standard for the 10th successive fiscal year. . .

The Top 10 for FY 2020 are:

1. Fall Protection – General Requirements (1926.501): 5,424 violations
2. Hazard Communication (1910.1200): 3,199
3. Respiratory Protection (1910.134): 2,649
4. Scaffolding (1926.451): 2,538
5. Ladders (1926.1053): 2,129
6. Lockout/Tagout (1910.147): 2,065
7. Powered Industrial Trucks (1910.178): 1,932
8. Fall Protection – Training Requirements (1926.503): 1,621
9. Personal Protective and Life Saving Equipment – Eye and Face Protection (1926.102): 1,369
10. Machine Guarding (1910.212): 1,313”

(National Safety Council website, 3/2/2021).

OSHA COVID-19 National Emphasis Program Signals Increased Enforcement -

President Biden issued an Executive Order in January 2021 calling for OSHA to consider a federal COVID-19 Emergency Temporary Standard and national emphasis program. On March 12, 2021, OSHA issued a directive to implement a national emphasis program (NEP). The goal of OSHA’s new COVID-19 NEP as stated in the directive, is “to significantly reduce or eliminate worker exposures to SARS-CoV-2 by targeting industries and worksites where employees may have a high frequency of close contact exposures and therefore, controlling the health hazards associated with such exposures.” The chemical industry is listed as a “secondary target.” The COVID-19 NEP went into effect immediately upon publication. Click [here](#) to read the OSHA directive. (OSHA website).

Five Best Practices Using Disinfectants in the Workplace – “As we continue to live with COVID-19, businesses increasingly deploy disinfectants in the workplace to ensure that employees can continue to work in person (or, in many instances, return to in-person work after months of working remotely). However, companies that buy and use disinfectants may subject themselves to various legal obligations, some of which could be unintuitive. . . Here are five best practices for using disinfectants in the workplace.

- Develop an official company policy for cleaning practices and disinfection protocols that reflects EPA and Centers for Disease Control and Prevention guidance. This written policy should be implemented and reviewed routinely, especially as agency guidance is continually being fine-tuned during the pandemic. Your company policy should identify disinfectants that are being used, and the policy should accurately and fully incorporate

the legally binding requirements found on both the disinfectant labels and in Safety Data Sheets.

- List N is the best reference for sourcing disinfectants. List N is a complete, real-time catalog of all pesticide products EPA has assessed for efficacy against the novel coronavirus. In light of EPA's catalog of disinfectants approved for use against SARS-CoV-2, employers should be wary of bad actors looking to cash in on a crisis. Unfortunately, the COVID-19 pandemic has been a veritable "gold rush" for unscrupulous individuals and companies selling products and devices with bogus or unapproved claims of efficacy against SARS-CoV-2. In fact, EPA and the Department of Justice have investigated a number of cases involving unregistered pesticides, some of which have resulted in criminal prosecution. This is why List N remains the best and most complete resource for sourcing EPA-reviewed and approved products.
- The "label is the law." Under FIFRA, EPA reviews and approves all label language for registered pesticide products. Employers using disinfectants as part of their cleaning and disinfection plans need to incorporate the label instructions for using the product, including the application method, use sites, surface contact times, and storage and disposal requirements. It is unlawful under FIFRA to use a pesticide product inconsistent with label instructions. For products on List N that have not been approved for on-label claims of efficacy against the novel coronavirus, EPA will specify which on-label directions should be followed.
- Request Safety Data Sheets from disinfectant suppliers. If a disinfectant distributor or manufacturer has not provided you with a Safety Data Sheet, you should request one in order to review the chemical hazards and safe handling and use guidance and impart that information to your employees. If the chemical is hazardous, you will need to provide appropriate personal protective equipment to protect your employees.
- Be aware of evolving gray areas in federal pesticide law."

Read the full article [here](#). (Lexology, Sidley Austin LLP - Andrew R. Stewart et al., 3/5/2021).

New OSHA Interpretation Letter Clarifies "Double Reporting" Issue – "In a new formal [Letter of Interpretation \("LOI"\) responding to Conn Maciel Carey LLP \("CMC"\)](#), OSHA explains that employers are only obligated to report a serious injury or illness once, even if it ultimately results in more than one reportable outcome; e.g., an employer need not report to OSHA a later-developing employee death, if the employer has already reported to OSHA the hospitalization of that same employee from the same incident that resulted in his hospitalization. A plain reading of OSHA's [hospitalization, amputation, and fatality regulatory language](#) did not make this clear, nor did existing guidance provided by OSHA at the time." Read the full article [here](#). (The OSHA Defense Report, Eric J. Conn et al., 3/24/2021).

Fall Protection Survey – "A [new survey](#) from CPWR – The Center for Construction Research and Training, supported by the American Society of Safety Professionals (ASSP), aims to gather key insights from safety and health professionals this spring that can help advance fall protection in all industries worldwide. Results from the online Fall Experience Survey, which explores the root causes of falls from height, will assist the ANSI/ASSP Z359 Fall Protection and

Fall Restraint Committee in enhancing voluntary national fall protection and fall restraint consensus standards that guide occupational safety at construction sites and across all industries.” The survey is open until April 30, 2021. (ASSP website, News and Articles, 2/15/2021).

Impairment at Work Means More than Substance Abuse – A National Safety Council survey released on February 15, 2021 shows 90% of employers are concerned about mental health and chronic stress impacting fitness for duty in addition to concerns about drug and alcohol abuse. Read the full article [here](#).

ENVIRONMENT

EPA Finalizes Cross-State Air Pollution Rule - “On March 15, 2021, EPA published [a final rule](#), pursuant to the good-neighbor provision of the Clean Air Act, which directs EPA and states to address interstate transport of air pollution that affects downwind states’ ability to attain and maintain compliance with the 2008 National Ambient Air Quality Standard (NAAQS) for ozone. As we explained [previously](#), the Revised Cross-State Air Pollution Rule (CSAPR) Update is EPA’s rulemaking in response to the U.S. Court of Appeals for the D.C. Circuit’s decision in [Wisconsin v. EPA](#), in which the court remanded an earlier EPA CSAPR update rule. EPA here found nine states (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin) required no additional regulation. For 12 states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia), EPA found that projected 2021 ozone season nitrogen oxides (NOx) emissions contribute significantly to downwind states’ nonattainment or maintenance problems for the 2008 ozone NAAQS. Accordingly, EPA issued new or amended Federal Implementation Plans, which include replacement of NOx Ozone Season Group 2 emissions budgets for electric generating units (EGUs). In the final rule, EPA maintained its determination not to require additional controls on non-EGUs. This rule does not address state obligations under the more [stringent 2015 ozone NAAQS](#), which bears close watching. The 2015 rule likewise was challenged in court, with the most recent [action](#) on remand at the end of the last administration among the EPA regulations [being reviewed](#) by the Biden administration.” (Lexology, Sidley Austin LLP - Samuel B. Boxerman et al., 3/23/2021)

Update on the Chemical Safety Board – The attached article gives an update on the Chemical Safety Board (CSB). The article also includes slides and a recording to a recent webinar. Issues of interest include the accidental release reporting rule which went into effect last year with the grace period that ended on March 21, 2021. Other topics include board governance with a “quorum of one” and recent CSB work products. Click [here](#) for details.

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