

Regulatory Updates
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SAFETY

COVID-19 Emergency Temporary Standard is Still Pending - OSHA sent a COVID-19 Emergency Temporary Standard (ETS) to the White House Office of Management and Budget on April 26 for final review, but the status of the rule is still pending. Although the details of the rule were not made available to the public, the U.S. Department of Labor had said in April that OSHA ‘has been working diligently on its proposal and has taken the appropriate time to work with its science-agency partners, economic agencies, and others in the U.S. government to get this proposed emergency standard right.’ President Joe Biden had initially requested the ETS by March 15.” (SHRM, Lisa Nagele-Piazza, J.D., 5/28/2021.)

Adverse Reactions to COVID-19 Vaccines Are NOT Recordable - “Many people have experienced something of a flu-like reaction to the COVID-19 vaccines, and often have required at least a day away from work the day after the second dose. OSHA had previously indicated that many of these reactions would be recordable on the OSHA 300 Log, especially if the employer required or strongly encouraged the vaccine, or if the circumstances of the job made vaccination something of a *de facto* requirement. In mid-April, OSHA clarified its position in a couple of [FAQs](#) about the recordability of adverse reactions to the vaccine in a couple of FAQs on its COVID-19 page.” In late May, the FAQ was updated to indicate that such an adverse reaction is not recordable. (Conn Maciel Carey’s COVID-19 Task Force, 5/24/2021.)

Per the revised FAQ, “DOL and OSHA, as well as other federal agencies, are working diligently to encourage COVID-19 vaccinations. OSHA does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccination, and also does not wish to disincentivize employers’ vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904’s recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. We will reevaluate the agency’s position at that time to determine the best course of action moving forward.” (OSHA website.)

OSHA Inspections to Focus on Facilities with Serious Injuries – According to an article in Safety Compliance Alert dated 5/14/2021, OSHA’s Site-Specific Targeting inspection program for non-construction employers is back and will run for two years. Also, Secretary of Labor Marty Walsh has directed the agency to ramp up inspections. Most likely to be inspected are facilities with a high DART rate (Days Away, Restricted and/or Transferred) time from work compared to their industry national average, facilities with very low rates compared to the industry national average that could potentially be underreporting, and facilities that report their injury rate late or not at all.

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ENVIRONMENT

EPA Will Rescind Final Rule Establishing Administrative Procedures for Issuing Guidance Documents

– “The U.S. Environmental Protection Agency (EPA) is scheduled to [publish a final rule](#) on May 18, 2021, that will rescind the October 18, 2020, rulemaking that established procedures for issuing, modifying, withdrawing, and using guidance documents. According to the final rule, after consideration and review, ‘EPA has concluded that the internal rule on guidance deprives the EPA of necessary flexibility in determining when and how best to issue public guidance based on particular facts and circumstances, and unduly restricts the EPA’s ability to provide timely guidance on which the public can confidently rely.’ EPA states that it will continue to make Agency guidance available to the public at its website. In addition, EPA will comply with all statutory obligations pertaining to posting documents for public accessibility. EPA will also continue its practice, as appropriate, of soliciting stakeholder input on guidance of significant stakeholder and public interest. EPA notes that consistent with the Administrative Procedure Act (APA), stakeholders may still petition EPA at any time regarding its regulatory programs, including requests to issue, amend, or repeal EPA guidance. The final rule will be effective when published in the *Federal Register*.” (Lexology, Bergeson & Campbell PC - Lynn L. Bergeson, et al., 5/17/2021.)

EPA Incorporates Environmental Justice into Enforcement Policy

– “Although not new, environmental justice (EJ) issues have played a prominent role in the EPA’s agenda under new Administrator Michael Regan. In a recent [message](#) to EPA employees, Administrator Regan instructed all EPA offices to integrate environmental justice considerations into their plans and activities. The EPA further demonstrated its commitment to EJ by issuing a [memorandum](#) directing enforcement staffers to strengthen enforcement efforts in EJ communities. The April 30, 2021, memo lays out three enforcement program goals designed to advance environmental justice. These goals include: (1) increasing the number of facility inspections in EJ communities; (2) resolving violations in EJ communities using remedies that provide tangible benefits for the community; and (3) improving engagement with EJ communities on enforcement cases that most directly impact them.” Read the January 27, 2021 [Executive Order 14008](#) and read the full article [here](#). (Lexology, Thompson Coburn LLP - Ryan Russell Kemper, et al, 5/7/2021.)

EPA Raises Hazardous Material Penalties

– “For the second time this year, US DOT has increased civil penalties for violations of the Hazardous Materials Regulations (HMR). . . On Monday, May 3, the DOT sub-agencies that enforce the nation’s hazardous materials and transportation rules—PHMSA, FAA, FMCSA, FRA, et. al.—each posted an [identical notice to the Federal Register](#) to alert stakeholders that, effective immediately, penalties are rising once again. . . [B]elow are the new maximum and minimum civil penalty values for HMR violations, as of May 3, 2021:

- \$84,425 per day, per violation is the new maximum civil penalty for a typical hazmat shipping violation.
- \$196,992 per day, per violation is the new maximum civil penalty for a violation that results in death, serious illness, severe injury, or substantial property damage.

- \$508 per employee, per day is the new minimum penalty for failure to provide [hazmat training](#) as required by 49 CFR 172.704.

US DOT and other Federal agencies, including US EPA and OSHA, are authorized to increase civil penalties on an annual basis to match the rate of inflation. DOT's 'annual' civil penalty adjustment for 2020 was completed later than usual, in January 2021. The most recent increase before January was in August 2019. Now, DOT is upping the penalties again—this time for the 2021 adjustment. . . Annual civil penalty adjustments began in 2015, when the Bipartisan Budget Act of 2015 amended the Federal Civil Penalties Inflation Adjustment Act. . . [EPA increased its penalties](#) for violations of air, water, chemical, and hazardous waste standards in December 2020. [OSHA increased civil penalties](#) for workplace safety violations in January 2021.” (Lion Technology, Inc., Roger Marks, 5/3/2021.)

Expansion of the Toxics Release Inventory (TRI) Reporting Requirements – The update to the TRI reporting requirements includes a “comprehensive plan includes expanding the scope of TRI reporting requirements to include additional chemicals and facilities, including facilities that are not currently reporting on ethylene oxide (EtO) releases, and providing new tools to make TRI data more accessible to the public. TRI is a resource for learning about annual chemical releases, waste management, and pollution prevention activities reported by nearly 22,000 industrial and federal facilities. ‘Every person in the United States has a right to know about what chemicals are released into their communities,’ said EPA Administrator Michael S. Regan. ‘By requiring new and more data on chemical releases from facilities, EPA and its partners will be better equipped to protect the health of every individual, including people of color and low-income communities that are often located near these facilities but have been left out of the conversation for too long.’ Today’s announcement includes several components:

- TRI Facility Expansion to Include Certain Contract Sterilizers using EtO
- TRI Reporting for Natural Gas Processing Facilities
- TRI Reporting for Additional Per- and Polyfluoroalkyl Substances (PFAS)
- TRI Reporting for TSCA Workplan and High-Priority Chemicals”

The annual TRI reporting deadline is July 1. Read the full news release [here](#). (EPA website, 4/29/2021.)

EPA Aims to Curb Hydrofluorocarbons – “The U.S. Environmental Protection Agency is proposing rules to reduce the use of coolants from air conditioners and refrigerators that are potent greenhouse gases, fulfilling new mandates from Congress with regulations favored by large portions of U.S. industry, according to the agency. The proposal would create a process for reducing the use of hydrofluorocarbons in cooling appliances, the first step toward meeting new mandates to cut their supply by 85% over 15 years, the EPA said. . . Industry has been broadly supportive of the new mandates. But it has also warned that it would inherently be more expensive to create new alternatives and there may be problems, especially if change comes too quickly. Industrial chillers, for example, have to run harder to provide the same level of refrigeration while using some of the new products, according to the Industrial Energy Consumers of America. [Boeing](#) Co. said in a letter to senators in March 2020 that some

aerospace uses don't yet have alternatives to HFCs, especially for fire-suppression agents on commercial and military aircraft. The largest auto makers' trade group in Washington, the Alliance for Automotive Innovation, sounded similar warnings about the short supply of alternatives. Its letter from April 2020 said the alternative refrigerant now common for light-duty vehicles, HFO-1234yf, costs roughly \$42 a pound, compared with just \$7 a pound for the product HFC-134a. As they have phased out more pollutive products over decades, chemical makers and manufacturers have been creating an array of alternatives for the more universal coolants that were once prominent. It has been tricky for some industrial customers to navigate new products, and if their evolution slows, HFC imports and prices may rise, lobbyists said." (Wall Street Journal, Timothy Puko, 5/3/2021.)

EPA Proposes Changes to its NPDES Construction General Permit - "On May 12, 2021, the U.S. Environmental Protection Agency issued a notice and a request for comment on the [proposed 2022 National Pollutant Discharge Elimination System \(NPDES\) general permit](#) for stormwater discharges associated with **construction** activities. The proposed permit would replace the existing 2017 Construction General Permit (CGP) that is set to expire on February 16, 2022. EPA's CGP applies only in those areas of the country where EPA is the NPDES permitting authority, although states who implement the NPDES program often follow permit conditions that are included in EPA's NPDES permits.

EPA's CGP applies to construction site operators who disturb one or more acres of land, or less than one acre but part of a larger common plan of development or sale if the common plan ultimately disturbs one acre or more. Generally, the CGP requires operators to implement technology-based effluent limitations (e.g., erosion and sediment controls), meet applicable water quality standards, and otherwise minimize the discharge of sediment from construction activities into waters. Operators that complete construction activities are required to stabilize disturbed areas prior to terminating permit coverage. EPA categorized its proposed changes to the CGP as either ones that to improve the clarity of the permit or ones that add specificity to the permit requirements. Among the notable changes to improve permit clarity include:

- Differentiation between routine maintenance and corrective action
- Inspections during snowmelt conditions
- Perimeter controls and natural buffers

The notable changes that add specificity to the permit include

- Perimeter control installation and maintenance
- Dewatering discharge requirements
- Training requirements for site inspectors
- Documenting signs of sedimentation

.. EPA is accepting comments on the proposed 2022 CGP until July 12, 2021." (Lexology, Manko Gold Katcher & Fox - Diana A. Silva BS and Zachary J. Koslap, 5/27/2021.)

In Review: Environmental Protection Regulations in USA - The following article is an excellent summary of U.S. environmental regulations and is a good resource for those new to the field. Click [here](#) for the article. (Lexology, Covington & Burling LLP - Theodore Garrett, 3/4/2021.)

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Safeguarding Our Information Technology Infrastructure - Our industry and facilities are certainly not immune to cyber-attacks. How robust are your IT safeguards? “As has been reported, a recent ransomware attack has caused an interstate pipeline and fuel supplier to much of the eastern United States to shut down its operations. Although the attack did not compromise operational systems, the company opted to cease operations as a precautionary measure. The FBI confirmed that the attack was carried out by an international criminal gang of hackers. The US Department of Energy, Cybersecurity and Infrastructure Security Agency, FBI, and other government officials are working directly with the pipeline to restore operations. This recent attack has highlighted the cybervulnerabilities of private infrastructure that is critical to national security, the economy, and overall public health. As we reported previously, the increase in cyberattacks on pipelines and other critical infrastructure continues to raise concerns over the adequacy of federal government oversight and related questions, including the following, Political Focus on Safeguarding Critical Infrastructure, Renewed Calls for Mandatory Cybersecurity Standards, Risks of IT and OT Network Interdependencies, and Commercial Considerations.” Read the full article [here](#). (Lexology, Morgan, Lewis & Bockius LLP - Lewis M. Csedrik et al., 5/12/2021.)

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Send your suggestions and comments to joel@pinechemicals.org.