

Regulatory Updates
Compiled for the Pine Chemicals Association
October 1, 2021

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<NEW> UPCOMING CONFERENCES

--NSC Congress and Expo - 10/11-13/2021, Orlando FL

--ASSP Safety 2022 Professional Development Conference and Exposition - 6/27-29/2022, Chicago

--2022 PCA Annual Meeting - 4/27-29/2022, Palm Beach Gardens FL

SAFETY

What to Expect from OSHA on COVID-19 Vaccine and Testing Rules – “Businesses with at least 100 employees will soon be required to mandate that employees get vaccinated against the coronavirus or submit to weekly testing. Employers are still waiting for the Occupational Safety and Health Administration (OSHA) to issue an emergency temporary standard (ETS), and some key questions have yet to be answered, but employers can take certain steps now to prepare. Here's what employers need to know.” Click [here](#) for the article.

OSHA to Issue COVID-19 Emergency Temporary Standard Setting a “Soft”

Vaccine-Mandate – Here’s another informative article on the upcoming COVID-19 ETS. “On September 9, 2021, President Biden charged federal OSHA with developing a second emergency temporary standard (ETS) requiring all but small employers in all industries but healthcare to implement ‘soft’ vaccine mandates, i.e., to require employees to either be fully vaccinated or get weekly COVID-19 testing. The President directed OSHA to include in this new ETS a requirement that these employers provide paid time for employees to get vaccinated and recover from the vaccine. The President also issued executive orders mandating federal contractors and healthcare employers implement ‘hard’ vaccine mandates.” Read the full article [here](#). (OSHA Defense Report, Conn Maciel Carey’s COVID-19 Taskforce, 9/10/2021.)

Safety Video Link Library - The Texas Department of Insurance has collected a large list of links to safety videos from a variety of different government, educational and safety organizations. Click [here](#) to access these. (Texas Department of Insurance website.)

PCA Involvement with ACC on the Proposed Hazard Communication Standard –

On February 16, 2021, OSHA published a Notice of Proposed Rulemaking (NPRM) to modify the Hazard Communication Standard (HCS) to align with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Revision 7, to address specific issues that have arisen since OSHA last updated the HCS in 2012, and to provide better alignment with other U.S. agencies and international trading partners, without lowering the overall protections of the standard. PCA is working with the American Chemistry Council (ACC) to comment on the proposed standard. There are concerns in two specific areas. First, ACC members feel that aligning with the UN “Purple Book” is a better way to harmonize with GHS, since some flexibility by country is allowed. Second, the proposed language would require any upstream manufacturer or importer of a chemical to classify and label that chemical to reflect all hazards of the product as shipped, including changes in physical form, downstream chemical reactions, the products of those downstream chemical reactions, and foreseeable emergencies involving any or all of the above. ACC provided comments in an OSHA informal hearing on September 20 focusing on these two issues.

OSHA, NIOSH Revise Small Business Handbook – This document may be helpful to share with some of the small businesses with which you interact. Click [here](#) to access the handbook. (OSHA website, 8/3/3021.)

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The Death Knell for Oil Dispersants? – “On August 9, 2021, the U.S. District Court for the Northern District of California ordered the Environmental Protection Agency (EPA) to issue a final rule amending regulations on the use of dispersants in oil spill responses. . . . [T]he Court determined that EPA’s delay in updating the statutorily required National Contingency Plan (NCP) for responding to oil spills constituted a failure to undertake a nondiscretionary duty under the Clean Water Act (CWA). Thus, the Court ordered the EPA to issue a final rule on dispersant listing and authorization of use by the end of May 2023. Although the Court’s decision requires EPA to finalize a rule that was previously proposed in 2015 and that was intended to address, for the first time since 1994, new information regarding the efficacy and toxicity of dispersants, and other chemical and biological agents used in oil spill responses, significant questions remain as to whether EPA’s final rule will address the most recent science regarding environmental and human health impacts of dispersants.” (Van Ness Feldman LLP, 8/17/2021.)

Survey Finds Companies Invite Regulatory Guidance on ESG Reporting - There’s lots in the news about environmental, social, and governance (ESG) reporting. Here’s an informative article on the topic. “Environmental, social and governance initiatives are increasingly important to public companies, but uncertainty around how to report ESG activities underscores a clear need for better regulatory guidance. This according to a new report released today by [Intelligize](#), an industry-leading provider of corporate compliance management solutions. According to [The Conscience of Corporations: Public Company ESG Adoption](#), three-quarters of recently surveyed public company representatives have a desire to create positive ESG outcomes. Those desires, however, are tempered by a lack of knowledge about important ESG issues, including how costs affect their companies’ commitments, whether ESG-related information should appear in their financial reports, and whether their ESG reporting is even accurate.” Read the full article [here](#). (Corporate Compliance Insights, 9/1/2021.)

Waters of the US: EPA Rescinds Guidance on “Functional Equivalent” – The issue of whether an indirect discharge to the navigable waters requires an NPDES permit continues to evolve.

On September 15, 2021, the Biden administration announced it was rescinding the Trump administration’s guidance on the Supreme Court’s decision in *County of Maui v. Hawaii Wildlife Fund* and the Clean Water Act (CWA), . . . [T]he U.S. Supreme Court addressed whether the CWA’s NPDES requires a discharger to acquire “a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source,” such as groundwater. The justices concluded that the CWA only required a permit where the point source pollutant entered the navigable waters of the United States from “the functional equivalent of a direct discharge.” The court then created a non-exhaustive list of factors to consider when determining whether a functional equivalent of a direct discharge exists, . . . [O]n January 14, 2021, the Trump

administration's EPA promulgated a guidance document. . .With the rescission of the guidance document, the Biden administration's EPA informed dischargers that "[c]onsistent with past practice, and now informed by the factors specified by the Supreme Court, EPA will continue to apply site-specific, science-based evaluations to determine whether a discharge from a point source through groundwater that reaches jurisdictional surface water is a 'functional equivalent' of a direct discharge. Accordingly, all point-source dischargers should engage in discussions with their legal experts to re-evaluate the existing regulation and the *County of Maui*, as a precautionary measure, to ensure they are in compliance with the permit requirements of the EPA and NPDES.

Read the full article [here](#). (Lexology, Goldberg Segalla LLP - Ian J. Guthoff, 9/23/2021.)

EUROPEAN UNION

Regulatory Developments in the EU - Click [here](#) to review key regulatory developments in the EU. (Lexology - Dentons, Dr. Holger Schelling, et al., 9/20/2021.)

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