

**Regulatory Updates**  
**Compiled for the Pine Chemicals Association**  
**December 1, 2021**

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UPCOMING CONFERENCES

--NSC Northeast Safety Conference and Expo – 3/16-18/2022, Pittsburgh PA

--NSC Southeast Safety Conference and Expo – 4/12-14/2022, Charleston SC

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

--NSC Southern Safety Conference and Expo – 5/10-12/2022, New Orleans LA

--NSC Midwest Safety Conference and Expo – 6/8-10/2022, Indianapolis IN

--ASSP Safety 2022 Professional Development Conference and Exposition - 6/26-29/2022,  
Chicago

--NSC Safety Conference and Expo – 9/19-21/2022, San Diego CA

## **SAFETY**

**COVID-19 ETS is Likely Stayed Until December 10** – This topic is subject to many changes, so check your news resources frequently. “[The COVID-19 Emergency Temporary Standard] (ETS) was subject to over 30 petitions for review in the federal circuit courts and was quickly stayed by the United States Court of Appeals for the Fifth Circuit. Although the petitions for review were consolidated before the United States Court of Appeals for the Sixth Circuit, the Fifth Circuit’s stay remains in place. While OSHA has publicly stated that it will comply with the stay, its position has been – and continues to be – that employers should prepare to comply with the ETS and that OSHA will succeed in litigation challenging the ETS. On November 24, OSHA filed an emergency motion to immediately lift the stay. With the stay in place, covered employers have been in the difficult position of trying to determine how much preparation to do to comply with the ETS’s requirements, many of which are scheduled to be effective on December 6, 2021. The question has been whether the stay will continue beyond the initial deadlines and, if not, whether deadlines will be extended to account for the period during which the ETS was stayed. The deadlines set out in the Sixth Circuit’s Scheduling Order, which is available [here](#), provide some insight into the timing of the requirements of the ETS. The Scheduling Order sets the following briefing deadlines:

- Tuesday, November 30, 2021 – motions to join OSHA’s emergency motion or to modify, revoke, or extend the stay.
- Tuesday, December 7, 2021 – responses to motions regarding the stay.
- Friday, December 10, 2021 – replies to responsive motions.

Given these deadlines, it is likely that the ETS will continue to be stayed until at least December 10th (past the December 6, 2021 deadline) while the Sixth Circuit considers briefing. However, it is possible that, before December 10th, the Sixth Circuit lifts the stay. If the stay is lifted, the ETS requirements could become effective on the date of the court’s order or on a later date set by the Sixth Circuit.” Read more [here](#). (National Law Review, 11/25/2021.)

**Another Article on the COVID-19 ETS** – This short article looks at the following aspects of the lawsuit, including: does COVID-19 pose a danger to justify an Emergency Temporary Standard (ETS), has OSHA exceeded their authority, does the ETS contradict the Healthcare ETS, and does the pandemic justify the ETS’s disruption and cost to businesses? “Attempting to discern what the final court ruling on the ETS will say would amount to speculation. Erring on the more prudent side, employers should prepare for the federal courts to reinstate the ETS and continue plans for how to comply with the vaccine mandate and related requirements.” Read the full article [here](#). (JD Supra, Cohen Seglias Pallas, Greenhall & Furman PC, 11/29/2021.)

**Heat Stress Rulemaking** – Earlier this month, OSHA published in the Federal Register an Advanced Notice of Proposed Rulemaking initiating a new formal rulemaking focused on “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.” The current deadline for submission of comments is December 27, 2021. However, requests for an extension of the comment period have been submitted and an additional 30 days to submit comments is likely. This could have significant impact on many industries and workers, including Pine Chemicals. Read more [here](#) and [here](#).

## **ENVIRONMENT**

**Standard for Particulate Matter to be Reconsidered** – “EPA announced that it will reconsider the previous administration’s decision to retain the particulate matter (PM) National Ambient Air Quality Standards (NAAQS), which were last strengthened in 2012. EPA is reconsidering the December 2020 decision because available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. . . EPA’s 2020 Policy Assessment concluded that the scientific evidence and information support revising the level of the annual standard for the PM 2.5 NAAQS to below the current level of 12 micrograms per cubic meter while retaining the 24-hour standard. The agency also received numerous petitions for reconsideration as well as lawsuits challenging the December 2020 final action. . . EPA expects to issue a proposed rulemaking in Summer 2022 and a final rule in Spring 2023, following an open, transparent process with opportunities for public review and comment. In accordance with Executive Orders and guidance, the agency will be considering environmental justice during the rulemaking process.” Read more [here](#) and read the full press release [here](#). (EPA website, 6/10/2021.)

*Send your suggestions and comments to [joel@pinechemicals.org](mailto:joel@pinechemicals.org).*