

Regulatory Updates
Compiled for the Pine Chemicals Association
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UPCOMING CONFERENCES

- NSC Northeast Safety Conference and Expo – 3/16-18/2022, Pittsburgh PA
- Utah Safety Conference and Expo – 3/30-31/2022, Sandy UT
- Florida Chamber Safety Council Conference & Expo - 3/31 and 4/1/2022, Lake Buena Vista FL
- 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 IL
- NSC Safety Conference and Expo – 9/16-21/2022, San Diego CA

SAFETY

CDC Relaxes Face Covering and Distancing Guidelines – The following article is summarized below, but it's worth reading the whole article [here](#).

CDC's new guidelines measure the impact the pandemic by looking at three factors week over week:

1. New cases per capita (as with the prior guidelines; but also
2. New COVID-19 related *hospital admissions*; and
3. The percentage of area hospital beds occupied by COVID-19 patients.

Each county will have a weekly "COVID Community Level Rating" that is either Low (green), Medium (yellow) or High (orange). Each level/color has recommended mitigation strategies. . .

Shifting to evaluate these issues on a more local level, rather than at the state-wide level as it has been, makes a lot of sense, but on the other hand, these new guidelines represent a shift from relying on leading indicators (just case counts) to a metric that is 2/3rds based on lagging indicators (hospitalizations and hospital capacity). If we encounter a future variant that is more virulent or more easily evades immune protections from vaccination or prior infection, the new CDC system could result in too slow of a trigger to reinstitute COVID-19 protocols.

So where does this leave employers? If there are no state or local masking requirements, and there are very few of those left now, and the CDC has designated the county where your workplace is located to be in the low or medium category, you have no obligation to require your employees to be masked in the workplace. Of course, you may continue do so, but you would not have to adhere to CDC's guidelines.

Stay vigilant and flexible. (OHSa Defense Report, Conn Maciel Carey LLP's COVID-19 Task Force, 3/1/2022)

New How-To Document on Silica Dust Monitoring - A new publication from the National Institute for Occupational Safety and Health (NIOSH) details how to implement monitoring for respirable crystalline silica. This is primarily intended for industrial hygienists and safety professionals specifically within the mining industry, although those in other industries may also find it useful, according to NIOSH. The document details how to implement field-based monitoring for respirable crystalline silica. It was written for users with experience in respirable dust exposure assessment but who do not necessarily have specialized training in analytical techniques. Click [here](#) to read the article and to download the document. (cdc.gov, L. Chubb, E. Cauda, 1/2022)

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ENVIRONMENT

U.S. Supreme Court Set to Resolve Clean Water Act Uncertainty? – “The U.S. Supreme Court recently agreed to review whether the Ninth Circuit applied the proper test for determining if given wetlands are “waters of the United States” under the Clean Water Act (CWA). The case has broad implications for developers and other private and public property owners in connection with how wetland impacts may be regulated and require approval under the CWA. . .

The definition of ‘waters of the United States’ has been the subject of litigation in the United States Supreme Court and lower federal courts for decades. The Court considered the issue in *Rapanos v. United States* in 2006. Unfortunately, the decision only added to the confusion regarding what wetlands fall within regulatory jurisdiction. Most notably, the Court did not reach a majority opinion. Rather, four of the Justices (written by Justice Scalia) concluded that waters of the United States “included only those relatively permanent, standing or continuously flowing bodies of water” such as streams, oceans, rivers, and lakes, rejecting the broader definition the Corps implemented. Justice Kennedy, on the other hand, issued a concurrence concluding a water need only have a “significant nexus” to traditional waterways. The lack of decisive guidance resulted in additional litigation and confusion as to the appropriate decision; and the EPA and Corps have spent the last several years revising the applicable rule and associated guidance, increasing uncertainty surrounding what are waters of the United States.” (Lexology, Berger Singerman LLP - Lewis M. Killian, Jr. and Sidney C. Bigham, III, 1/31/2022)

Update on the RCRA Generator Improvement Rule Adoption – As of February 4, 2022, 38 states have adopted the Generator Improvements Rule. This includes the entire Southeast and most, if not all of the states where members have facilities. Click [here](#) to view the map and full article.

“The effective date for US EPA’s landmark Generator Improvements Rule (GIR) was May 30, 2017. States with approved RCRA programs (i.e., all states other than Alaska and Iowa) must adopt at least the more-stringent regulations within one year of the Final Rule’s effective date. If a state needs to change its state law to accommodate changes to its hazardous waste program, the state gets two years to adopt the Generator Improvements Rule. Both the one-year and two-year deadlines have now passed. If your state has not yet adopted the mandatory elements of the Generator Improvements Rule, you should expect them very soon.” (Lion Technology, Roger Marks, 2/3/2022)

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