

Regulatory Updates
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UPCOMING CONFERENCES

--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

--PCA International Conference – 9/25-27/2022, Denver CO

SAFETY

OSHA Reopens Rulemaking for a Permanent COVID-19 Standard for Healthcare with Expanded Scope

– “After OSHA just recently initiated a three-month COVID-19 focused enforcement blitz targeting the healthcare industry, earlier this week, on March 22nd, [OSHA announced that it has officially reopened the rulemaking record for a “permanent” COVID-19 standard](#) applicable to the healthcare industry, and perhaps now some industries tangentially related to healthcare. OSHA will accept comments on the proposed permanent standard through April 22, 2022, and has scheduled a public hearing on the rulemaking for April 27. Below we provide some important background and recommendations on next steps to ensure the healthcare industry and other potentially impacted employers maximize this opportunity to influence the direction and outcome of the permanent COVID-19 rulemaking.

Importantly, we also identify below a **potential major expansion of the scope of** coverage of the standard that OSHA is contemplating. OSHA is explicitly considering eliminating the coverage exemption that had been included in the COVID-19 Emergency Temporary Standard for Healthcare (the ETS) for those ambulatory care, non-hospital settings where some healthcare services are provided, but that screen individuals for COVID-19 before entry and prevent COVID-19 infected individuals from entering. If that exemption is not carried forward from the ETS into the permanent standard, then **general industry manufacturers that have medical clinics onsite**; dental and other doctors’ offices; retail pharmacies; etc. **will be pulled into coverage** under the permanent standard; i.e., any employer that operates any type of facility where any form of healthcare services are provided could be regulated by the permanent standard. It is imperative, therefore, that potentially impacted employers participate in this rulemaking.” Read the full article [here](#). (OSHA Defense Report, Conn Maciel Carey LLP’s COVID-19 Task Force, 3/24/2022)

OSHA Launches New COVID-19 Enforcement Blitz for Healthcare Employers

– “On March 8, OSHA announced a major COVID-19 enforcement blitz in the healthcare industry that will last for the next three months. OSHA issued an enforcement [memorandum](#) announcing the enforcement program, which OSHA is referring to as a major “saturation effort,” to ensure that hospitals and others in the healthcare industry have appropriate COVID-19 mitigation protocols in place to protect workers today and are prepared for a future variant. The program will be comprised of a short-term burst of highly focused inspections directed at hospitals and skilled nursing care facilities that treat COVID-19 patients. Below is a summary of who is covered, when the enforcement effort will end, the impact on State OSH Plans, and what to expect during the inspections.

OSHA states that the goal of this inspection program is to expand its presence to ensure continued mitigation of the spread of COVID-19 and preparation for future variants of the SARS-CoV-2 virus, and to protect the health and safety of healthcare workers at heightened risk for contracting the virus.” Read the full article [here](#). (OSHA Defense Report, Conn Maciel Carey LLP’s COVID-19 Task Force, 3/14/2022)

ENVIRONMENT

EPA Proposes ‘Worst-Case’ Accidental Discharge Rule - EPA is proposing new requirements for onshore industrial facilities for worst-case discharges of hazardous substances under the Clean Water Act (CWA). A worst-case discharge is “the largest foreseeable discharge in adverse weather conditions including those due to climate change.” Emergency plan and spill prevention measures would be required for facilities that store hazardous substances and are located within a half-mile of a navigable water or a conveyance. From the Federal Register:

EPA is proposing in § 118.3 two initial screening criteria to determine whether a facility, because of its location, could cause substantial harm to the environment from a worst-case discharge into or onto navigable water. The first step in assessing applicability is to determine whether a facility has the container capacity for a CWA hazardous substance onsite at or above [10,000 times the] threshold quantity. If so, the facility owner or operator then determines whether the facility is within one-half mile to navigable water or a conveyance to navigable water. EPA solicits comment on alternative or additional screening criteria with supporting rationale and data. If those two conditions are satisfied, the owner or operator determines whether the facility meets any of the four substantial harm criteria: The ability to adversely impact a public water system; the ability to cause injury to fish, wildlife, and sensitive environments (FWSE); the ability to cause injury to public receptors; and/or having had a reportable discharge of a CWA hazardous substance within the last five years. If any of those substantial harm criteria are met, then the owner or operator must submit a CWA hazardous substance FRP (Facility Response Plan) to EPA.

The proposed rule references [40 CFR 117.21](#) for the list of hazardous chemicals and their threshold quantities. Read more [here](#). The deadline to comment is May 27, 2022. (87 FR 17890, 3/28/2022)

EPA and Army Select 10 Roundtables to Highlight Regional Implications of

WOTUS - “EPA and U.S. Department of the Army (the agencies) announced the selection of ten geographically varied roundtables with participants representing diverse perspectives. The agencies will work with each selected roundtable to facilitate discussion on implementation of “waters of the United States” (WOTUS), while highlighting regional differences. . .

EPA and Army are announcing the selection of ten roundtables that highlight geographic differences and a range of perspectives—including agriculture, conservation groups, developers, drinking water and wastewater managers, environmental organizations, communities with environmental justice concerns, industry, Tribal nations, and state and local governments. The ten selected roundtables are:

- Amigos Bravos (Southwest)
- Arizona Farm Bureau (Southwest)
- Cahaba Brewing (Southeast)

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- California Farm Bureau (West)
- Kansas Livestock Association (Midwest)
- Natural Resources Defense Council (Northeast)
- National Parks Conservation Association (Midwest)
- North Carolina Farm Bureau (Southeast)
- Regenerative Agriculture Foundation (Midwest)
- Wyoming County Commissioners Association / Montana Association of Counties / Idaho Association of Counties (West)

. . . These regional roundtables are one important mechanism for the agencies to consider the regional variation in implementation of WOTUS, given the diverse water quality and quantity conditions in diverse parts of the United States. The regional roundtables will provide opportunities to discuss geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and site-specific feedback about the ongoing implementation of WOTUS by the agencies. The agencies anticipate hosting these regional roundtables virtually over the spring and summer. For more information visit: www.epa.gov/wotus.” (EPA website, 2/24/2022)

Third RCRA e-Manifest Rule Incoming – “A proposed rule to amend the regulations for electronic hazardous waste manifests has been signed by EPA’s Administrator and will appear in the *Federal Register* soon. Nicknamed “[The Third Rule](#)” by US EPA, the proposal would:

- expand manifest requirements to include export shipments,
- integrate certain mandatory reports into the electronic system,
- revise the time limits for submitting those reports [e.g., exception reports, discrepancy reports, and unmanifested waste reports], and
- make conforming changes concerning PCB wastes regulated under TSCA. . .

Note that electronic exception reporting would be available only for generators who are already using electronic manifests. Generators who use “hybrid manifests” would be required to register for an account to utilize electronic exception reporting.

The proposed rule is extensive and detailed. EPA requests public comments from stakeholders on many crucial issues, including how to best achieve the goals of the proposal. EPA also requests comments about how the e-Manifest system might be used in relation to the generator’s Biennial Report. For specifics about how EPA plans to achieve the goals of the proposed rule, see the pre-publication text of [the signed proposed rule here](#). The public comment period will open when the proposed rule appears in the *Federal Register*. Lion Staff will update this post at that time.” (Lion Technology, Inc., Roger Marks and Joel Gregier, CDGP, 3/11/2022)

EPA Publishes Proposed Rule and Direct Final Rule to Incorporate ASTM E1527-21 Phase I Standard into the Code of Federal Regulations - “On March 14, 2022, EPA simultaneously published a [Proposed Rule](#) and [Direct Final Rule](#) seeking to incorporate the

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recently revised ASTM E1527-21 *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* into the Code of Federal Regulations. The revised Phase 1 standard was previously published by ASTM International in November 2021. See our firm's earlier summary of the revised Phase 1 standard [here](#).

In the Proposed Rule and Direct Final Rule, the EPA noted that there are no legally significant differences between the regulatory requirements for All Appropriate Inquiry (AAI) and the ASTM E1527 standards. To facilitate an understanding of the slight differences in the revised Standard, the EPA published the "*Comparison of All Appropriate Inquiries Regulation, the ASTM E1527-13 Phase I Environmental Site Assessment Process and ASTM E1527-21 Phase I Environmental Site Assessment Process*," which contains EPA's perspectives on the comparison between the 2013 Standard and the revised 2021 Standard.

If EPA does not receive adverse comments in response to the Proposed Rule and Direct Final Rule prior to April 13, 2022, the rule will become effective on May 13, 2022. If EPA receives adverse comments, it will publish a timely withdrawal of the Direct Final Rule in the Federal Register, informing the public that the rule will not take effect. EPA would then address all public comments in a subsequent final rule that would also appear in the Federal Register." (Lexology, Manko Gold Katcher & Fox, Jonathan H. Spergel and Michael Nines, 3/16/2022)

EPA Removes Obstacles to "Sue and Settle" – "In a memo to agency leadership sent earlier this month, EPA Administrator Michael Regan rescinded practices that were instituted by one of his Trump-era predecessors, Scott Pruitt, to eliminate what has been referred to by some as "sue and settle" tactics. While the settlement of lawsuits is, of course, a common practice, many conservatives believed that the Obama-Administration's EPA was deliberately short-circuiting the political and/or administrative process in order to achieve certain environmental ends. This was supposedly being accomplished by the EPA encouraging the filing of lawsuits on politically contentious issues and then agreeing to settlement terms without an active public process, which in turn resulted in actions that the EPA actually wanted. The EPA could then claim it had no choice but to take the course of action involved, as it was subject to judicial orders. Regan said in the memo that the Pruitt policy to eliminate that practice was misguided." Read the full article [here](#). (Lexology, Snell & Wilmer LLP - Mitchell J. Klein, 3/28/2022)

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Send your suggestions and comments to joel@pinechemicals.org