Regulatory Updates
Compiled for the Pine Chemicals Association
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Table of Contents

SAFETY

OSHA Proposes Injury and Illness Reporting Update - Note that NCAIS Codes 31-33 (Manufacturing) are included in the list of designated industries. "OSHA proposed a rule on March 30 to revise the injury and illness reporting requirements for employers. Under the proposed rule, only employers in designated industries would be required to submit injury and illness data to OSHA annually. OSHA would remove the injury/illness reporting requirement for establishments with 250 or more employees that are not in a designated industry. Some employers in designated industries would be required to submit more detailed data to OSHA each year from Forms 300 and 301. Under the proposed rule:

- Establishments with **100** or more employees in certain designated industries would be required to submit information from OSHA Forms 300, 301, and 300A.
- Establishments with **20** or more employees in certain designated industries would be required to continue submitting Form 300A (Annually Summary) each year.

OSHA Form 300A is the annual summary of workplace injuries and illnesses. Forms 300 and 301 include more detail about the injuries and/or illnesses summarized on Form 300A. . . OSHA will accept comments on the proposed rule until May 31, 2022. Currently, annual reporting of injury and illness data is required from employers in industries listed in 29 CFR 1904, Subpart E, Appendix A. The proposed rule does not change the list of covered industries; It will simply update the list to match current NAICS codes." Read the full article here. (Lion Technology Inc., Roger Marks, 4/1/2022)

OSHA Launches an Indoor and Outdoor Heat Illness Program National Emphasis Program (NEP) – On April 8, OSHA launched a heat illness NEP. In part it states, "This NEP expands on the agency's ongoing heat-related illness prevention initiative and campaign by setting forth a targeted enforcement component and reiterating its compliance assistance and outreach efforts. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees." The NEP will be in effect for three years unless canceled or extended. Read the full instruction here. (osha.gov, 4/8/2022)

Top of the Document

ENVIRONMENT

EPA Proposes Ban of Chrysotile Asbestos in Historic TSCA Risk Management Rule

Rule – "On April 12, 2022, EPA announced a sweeping proposed ban on ongoing uses of chrysotile asbestos, the only form of asbestos known to still be imported into the United States. EPA's proposed ban is the first risk management rule issued under the Toxic Substances Control Act (TSCA) since the 2016 Lautenberg Act overhauled the statute to give EPA new powers to review and regulate existing chemicals. Given the potential precedent set by the breadth of the proposed ban, companies who manufacture, import, process, or distribute *any* of the chemicals EPA is analyzing under TSCA (or products containing those chemicals) should pay close attention as EPA moves to finalize its asbestos risk management rule. Companies may be particularly interested in the approach EPA has taken in developing the regulatory alternative provided in the proposed rule. EPA has developed an Existing Chemicals Exposure Limit (ECEL) for occupational use of chrysotile asbestos that is significantly lower than the existing Permissible Exposure Limit (PEL) provided by the Occupational Safety and Health Administration. . . Comments on the proposed rule, including comments on the alternative, are due to EPA on June 13." Read the full article here. (Lexology, Hunton Andrews Kurth LLP - Elizabeth Reese, et al., 4/20/2022)

EPA Updates Indoor Air Quality Guidance – "[EPA] is releasing the 'Clean Air in Buildings Challenge,' a call to action and a concise set of guiding principles and actions to assist building owners and operators with reducing risks from airborne viruses and other contaminants indoors. The Clean Air in Buildings Challenge highlights a range of recommendations and resources available to assist with improving ventilation and indoor air quality, which can help to better protect the health of building occupants and reduce the risk of COVID-19 spread." Read the full press release here. (epa.gov, 3/17/2022)

Here Today, Gone Tomorrow? Supreme Court Uses Emergency Docket to Weigh-in on Section 401 Program – This is a confusing topic, but I found that this article does a pretty good job explaining things. "Entities seeking federal authorization for infrastructure projects that may impact waters of the United States must obtain a Section 401 certification under the Trump administration's narrowed Section 401 certification rule—for now. On April 6, 2022, the U.S. Supreme Court held that the Trump administration's Section 401 certification rule will stay in place while further litigation proceeds, potentially signaling how the court may view the underlying merits of the case pending before the U.S. Court of Appeals for the Ninth Circuit.

Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, prohibits a federal agency from issuing a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a certification is granted or waived. States and authorized tribes are responsible for issuing, denying or waiving these Section 401 certifications. A Section 401 certification or waiver is necessary to obtain certain federally issued permits, such as Section 404 dredge and fill permits, Rivers and Harbors Act Section 9 and 10 permits, and Federal Energy Regulatory Commission licenses for pipelines or hydropower facilities.

Top of the Document

At issue before the Supreme Court—and now pending before the Ninth Circuit—was a 2020 Trump rule that reduces the time for states and tribes to make decisions on Section 401 certifications, and that limits the scope of review to "water quality requirements," as defined by the rule. As outlined in a prior Brownstein alert, the effect of the rule is to limit the authority of states and tribes to deny Section 401 certifications or add water quality-related conditions to permits issued by the federal government. . .

The Supreme Court granted the petitioners' stay request in a 5-4 decision, keeping the Trump rule in place while the appeal of the district court ruling proceeds to the Ninth Circuit. The Trump rule thus will remain until the underlying merits case is finally resolved or the Biden administration replaces it. The Biden administration is expected to issue a final replacement rule in 2023." Read the full article here. (Lexology, Brownstein Hyatt Farber Schreck LLP - Ronda L. Sandquist, et al., 4/22/2022)

Title V Permit Shield – "EPA is re-proposing a document, first proposed in 2016, which would remove the emergency affirmative defense provisions found in the regulations for state and federal operating permit programs under the Clean Air Act (CAA). The purpose of these provisions has been to establish an affirmative defense that sources can assert in civil enforcement cases when noncompliance with certain emission limitations in operating permits occurs because of qualifying ''emergency'' circumstances. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the enforcement structure of the CAA and court decisions from the U.S. Court of Appeals for the D.C. Circuit. The removal of these provisions is consistent with other EPA actions involving affirmative defenses and would harmonize the enforcement and implementation of emission limitations across different CAA programs." See EPA's website for more details. Comments are due by May 16. (epa.gov, 4/1/2022)

Send your suggestions and comments to joel@pinechemicals.org

Top of the Document